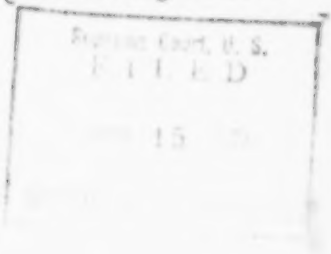
In the Supreme Court of the United States



October Term, 1973

No. 73-1541

ROBERT REID and NADIA ALICE REID,
Petitioners

vs.

IMMIGRATION AND NATURALIZATION SERVICE,
Respondent

PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals

FOR THE SECOND CIRCUIT

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October Term, 1973

No.

Robert Reid & Nadia Alice Reid. *Petitioners*

vs.

Immigration and Naturalization Service. *Respondent*

Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above case on February 13, 1974.

Opinion Below

The opinion of the Court of Appeals for the Second Circuit is reported at _____ F.2d _____. The opinion is appended to the petition in the Appendix at pp. 1-(1745-1772).

Jurisdiction

The judgment of the Court of Appeals for the Second Circuit was made and entered on February 13, 1974 and a copy thereof is appended to this petition in the Appendix at p. 2.

The Jurisdiction of this Court is invoked under 28 U.S.C. 2350, as recodified. See Sec. 106 (a), Act of 1952, 8 U.S.C. 1105a (a), as amended by Sec. 5, Act of September 26, 1961, P.L. 87-301, 75 Stat. 651. Sec. 4 (e) of the Act of September 6, 1966, P.L. 89-554, 80 Stat. 378, 621; recodification 28 U.S.C. Title 158, Secs. 2341-2352.

The Questions Presented for Review and Statute

1. The broad issue in this case is whether petitioners are saved from deportation by Sec. 241 (f) of the Immigration and Nationality Act. 8 U.S.C. Sec. 1251 (f) which provides:

"The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence.

June 27, 1952, ch. 477, Title II, ch. 5, § 241, 66 Stat. 204; July 18, 1956, c. 629, Title III, § 301 (b), (c), 70 Stat. 575; July 14, 1960, Pub. L. 86-648, § 9, 74 Stat. 505; Sept. 26, 1961, Pub. L. 87-301, § 16, 75 Stat. 655; Oct. 3, 1965, Pub. L. 89-236, § 11 (e), 79 Stat. 918."

2. More narrowly the issue is whether aliens who obtain entry into the United States under a false claim of citizenship and who become parents of children born in the United States, can qualify as aliens "otherwise admissible at the time of entry"

within the meaning of Sec. 241 (f), of the Immigration and Nationality Act.

3. In view of the express provision of the Statute (Sec. 241 (f) Immigration and Nationality Act), exempting from deportation aliens who "procure . . . entry into the United States by fraud or misrepresentation" and who are the parents of a United States citizen, did the United States Court of Appeals (Second Circuit) properly conclude that the exemption did not extend to aliens who procured such entry by falsely claiming United States Citizenship?

4. Is the application of the Statute (Sec. 241 (f) Immigration and Nationality Act) to be limited to aliens who gain entry by a particular species of fraud, namely, a fraud or misrepresentation in the course of obtaining immigrant visas?

5. Is the scope of this Court's decision in Immigration and Naturalization Service vs. Errico, 385 U.S. 214 (1966) limited in its application to aliens who gain entry by fraud in the course of obtaining immigrant visas, in view of the express language of the Statute (Sec. 241 (f)), its legislative history, congressional intent and humanitarian purpose?

Statement of Case

Petitioners are a married couple, natives of Honduras. Each entered the U.S. by falsing claiming to be U.S. citizens. Two children were born in the United States after their entry. Petitioners have no arrest record and neither has ever been a member of a subversive organization. Deportation or required departure from the United States would result in considerable hardship to the family because one child is age two and another eight months, (at time of hearing) and because when petitioners came to the U.S. they disposed of their possessions in British Honduras and would have no home to which they can return.

In November 1971, petitioners were served with an Order to Show Cause why they should not be deported upon the following charges, (see Appendix p. 3); That they entered the United States by falsely claiming to be citizens, that they

never were citizens and did not present themselves to Immigration Officers for inspection as aliens, and that they were subject to deportation under Section 241 (a) (2) of the Immigration and Nationality Act by entering without inspection.

A hearing took place on December 13, 1971 before Special Inquiry Officer Eugene C. Cassidy. He issued his decision on May 10, 1972 (Appendix p. 4), finding that the petitioners were deportable as charged in the Order to Show Cause. At the hearing each petitioner applied for termination of the proceedings under the provisions of Section 241 (f) of the Immigration and Nationality Act. The Special Inquiry Officer denied these applications, but ordered that in lieu of deportation each petitioner be granted voluntary departure. He also issued an Order of Deportation as to each petitioner, in the event they did not depart voluntarily. They have not departed.

Petitioners appealed from the Special Inquiry Officer's Decision and Orders to the Board of Immigration Appeals, which dismissed the appeals on December 12, 1972, and affirmed the Orders of Deportation. (Appendix p. 5)

Petitioners filed a petition to review with the Second Circuit Court of Appeals on January 10, 1973, pursuant to Sec. 106 of the Immigration and Nationality Act, 8 U.S.C. Sec. 1105a. On February 13, 1974, the Second Circuit Court of Appeals dismissed the petition. (Mulligan, J. dissenting) Petitioners here seek a review of the Judgment ordering the dismissal.

Reasons for Granting Writ

The decision of the Circuit Court of Appeals, Second Circuit, should be reviewed, for the following reasons:

1. The Second Circuit Court of Appeals has rendered a decision directly in conflict with the decision of the Ninth Circuit Court of Appeals in

LEE FOOK CHUEY vs. IMMIGRATION AND NATURALIZATION SERVICE, 439 F. 2d 244 (9th Circuit 1971)

The subject matter of both decisions is precisely the same and the questions presented are the same. In the *Lee Fook Chuey Case* the petitioner obtained entry into the United States under a false claim of citizenship and subsequently became the father of a child born in the United States. The Ninth Circuit Court of Appeals held that the alien was "otherwise admissible" within the meaning of Section 241 (f) of the Immigration and Nationality Act. The court further held that the exemption of the Statute extended to aliens who procured entry by a false claim of citizenship, that the application of the Statute was not limited to aliens who obtained entry by a particular species of fraud such as a fraud in the course of obtaining an immigrant visa. In the instant case a majority of the court held to the contrary.

2. Both the instant case and *Lee Fook Chuey* involve an interpretation and the correct application of Section 241 (f) of the Immigration and Nationality Act, an important question of Federal Law which should be settled by this Court.

3. The Second Circuit Court of Appeals in this case has decided a federal question in a way which is in conflict with the decision of this court in

IMMIGRATION AND NATURALIZATION SERVICE vs. ERRICO, 385 U.S. 214 (1966)

In the *Errico* case, Errico falsely represented his work status as a skilled mechanic, was granted first preference quota status, and he and his wife entered the United States. Thereafter a child was born to them. This court held that Errico was entitled to be saved from deportation since he was "otherwise admissible" within the meaning of the statute despite his evasion of quota restrictions. The Court based its decision on the legislative history of the statute and its broad humanitarian purpose. The same legislative history and purpose as well as the express language of the statute would indicate the same conclusion as to the application of the statute to the petitioners

here. As Judge Mulligan stated in his dissenting opinion in the instant case "the canons of construction applied by the Supreme Court in *Errico* are not conjectural, but are explicit and support the position of the Reids here." This court should review the decision of the court below since it appears to be in conflict with the scope of the Decision in the *Errico* case.

4. Certiorari was granted in *Errico* to resolve the conflicts between two Circuit Courts of Appeal in an interpretation of Section 241 (f) and because of the importance of the questions in the administration of the Immigration and Nationality Act. Certiorari should be granted here for the same reasons.

COMPARE U.S. vs. ZUCCA, 351 U.S. 91 and UNITED STATES vs. MINKER, 350 U.S. 179.

5. The questions presented involve issues of great public importance in the administration of the Immigration and Nationality Act. As stated by the government in its brief (p.5) in the Court below "this petition for review raises an important question concerning the administration and enforcement of this country's immigration laws. It requires the interpretation of an ameliorative provision of the Act, which affords to a specific class of aliens whose admission to this country was tainted by a certain type of fraud, a full and complete defense to a deportation proceeding. The broad issue goes to the extent and breadth of the statute's coverage. The more precise issue raised in this case is whether the statute, Section 241 (f) of the Act, precludes the deportation of an alien who gained entry by falsely posing as a citizen and who never obtained an immigrant visa nor ever subjected himself to the normal alien inspection procedure. The issue is of signal importance . . . . "

Conclusion

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

Petitioners
By BENJAMIN GLOBMAN
HARRY COOPER
Globman & Cooper
Their Attorneys

APPENDIX

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 171–September Term, 1973.

(Argued November 21, 1973 Decided February 13, 1974.)

Docket No. 73-1067

ROBERT REID AND NADIA ALICE REID,

Petitioners,

–against–

IMMIGRATION AND NATURALIZATION SERVICE

Respondent.

B e f o r e :

LUMBARD, MANSFIELD AND MULLIGAN,

Circuit Judges.

Petition for review of a final order of the Board of Immigration Appeals holding that §241(f) of the Immigration and Nationality Act, 8 U.S.C. §1251(f), did not permit waiver of deportation of petitioners, two aliens who entered the United States falsely posing as United States citizens and thereafter established a family here, and directing that they be deported pursuant to §241(a)(2) of the Act as aliens who entered without inspection.

Petition dismissed.

BENJAMIN GLOBMAN, Esq., Hartford, Conn. (Globman & Cooper, Hartford, Conn., of counsel), *for Petitioners.*

STANLEY H. WALLENSTEIN, Special Assistant United States Attorney (Paul J. Curran, United States Attorney for the Southern District of New York, Joseph P. Marro, Assistant United States Attorney, New York, N.Y., of counsel), *for Respondent.*

MANSFIELD, *Circuit Judge:*

Petitioners, Mr. & Mrs. Robert Reid, are natives and citizens of British Honduras who entered the United States at Chula Vista, California, which is on the Mexican border, falsely representing themselves to be United States citizens, with the result that they were not inspected as aliens by a United States immigration officer. Mr. Reid entered on November 29, 1968, and Mrs. Reid on January 3, 1969. Thereafter Mrs. Reid gave birth in the United States to two sons, one born on November 2, 1969, and the other on April 4, 1971, each of whom is a native born citizen of the United States.

On November 22, 1971, the Immigration and Naturalization Service ("INS") began deportation proceedings against the Reids, alleging that they were deportable under §241(a)(2) of the Immigration and Nationality Act ("Act"), 8 U.S.C. §1251(a)(2)[1] as aliens who entered the United States without inspection as immigrants. At a hearing held on December 13, 1971, before a special inquiry officer the Reids conceded the essential allegations of the INS order to show cause, admitting that

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1 "*§1251. Deportable aliens–General classes*

"(a) Any alien in the United States (including an alien crewman) shall, upon the order of the Attorney General, be deported who—

* * * * * * * * * * *

"(2) entered the United States without inspection or at any time or place other than as designated by the Attorney General or is in the United States in violation of this chapter or in violation of any other law of the United States; . . ."

they had entered the United States by falsely claiming to be United States citizens and that upon entry they had not presented themselves to an INS officer for inspection as aliens. However, they contended that their deportation was precluded by §241(f) of the Act, 8 U.S.C. §1251(f), an ameliorative statute which waives deportation in the case of fraudulent entry by aliens otherwise admissible into the United States who have close family ties with United States citizens. The ties relied upon by them were their two children born in the United States after Reids' illegal entry.

Holding that §241(f) was inapplicable, the special inquiry officer sustained the charge that the Reids were deportable on the ground that they had entered the United States without inspection. By order entered on May 8, 1972, he granted them voluntary departure in lieu of deportation and directed that they be deported to British Honduras in the event that they did not depart. On appeal the Board of Immigration Appeals by order entered on December 12, 1972, affirmed the special inquiry officer's order and dismissed the appeal, holding §241(f) to be inapplicable. This petition for review followed, our jurisdiction being invoked pursuant to §106 of the Act, 8 U.S.C. §1105a. For the reasons stated below the petition is dismissed.

DISCUSSION

The broad issue before us is whether §241(f) of the Act, which concededly applies to aliens who gain entry as the result of fraud in obtaining immigrant visas or fraud upon being inspected as immigrants at the point of entry, see Immigration and *Naturalization Service* v. *Errico*, 385 U.S. 214 (1966), also applies to aliens who enter by fraudulently posing as United States citizens. Section 241(f) provides in pertinent part:

> "(f) The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissable at the time of entry who is the spouse, parent, or a child of a United States citizen, or of an alien lawfully admitted for permanent residence."

On its face the language of the statute does not appear to limit the type of fraud or misrepresentation that will be waived, or the status claimed by the entrant. Reading the statute literally, therefore, one might conclude that as long as the alien was "otherwise admissible" at the time of entry the species of fraud or nature of the entry is immaterial. But, as Learned Hand was wisely warned, "[I]"t is commonplace that a literal interpretation of the words of a statute is not always a safe guide to its meaning," *Peter Pan Fabrics Inc.* v. *Weiner Corp.*, 274 F.2d 487, 489 (2d Cir. 1960). Even more appropriate for present purposes are his remarks in *Guiseppi* v. *Walling*, 144 F.2d 608, 624 (2d Cir. 1944) (concurring opinion), where he stated:

> "It does not therefore seem to me an undue liberty to give the section as a whole the meaning it must have had, in spite of the clause with which it begins . . . There is no surer way to misread any document than to read it literally; in every interpretation we must pass between Scylla and Chraybdis; and I certainly do not wish to add to the barrels of ink that have been spent in logging the route. As nearly as we can, we must put ourselves in the place of those who uttered the words, and try to divine how they would have dealt with the unforeseen situation; and, although their words are by

far the most decisive evidence of what they would have done, they are by no means final." (144 F.2d at 624.)

See also *Federal Deposit Ins. Corp.* v. *Tremaine*, 133 F.2d 827, 830 (2d Cir. 1943) (L. Hand, *C.J.*). ("There is no surer guide in the interpretation of a statute than its purpose when that is sufficiently disclosed; nor any surer mark of over solicitude for the letter than to wince at carrying out that purpose because the words used do not formally quite match with it.") Apparently the Supreme Court had these principles of statutory construction in mind in *Errico, supra,* where it rejected a literal application of §241(f), which would limit it to cases where an alien is charged with fraud in violation of §212(a)(19) of the Act, 8 U.S.C. §1182(a)(19),[2] concluding that it "cannot be applied with strict literalness," 385 U.S. at 217, since to do so would frustrate Congress' purpose in enacting it and would deny relief in cases where it was intended to be made available. There appears to be no reason for not using the same approach in determining whether a literal reading would expand the statue's application beyond that intended by its drafters.

The legislative history of §241(f) reveals a desire on the part of Congress to avoid the tragic destruction of family unity that might occur where an alien who fraudulently entered the United States as an immigrant, either by procuring the issuance of an immigration visa through misrepresentation or by deceiving those charged with examination

2 "*§1182. Excludable aliens—General classes*

"(a) Except as otherwise provided in this chapter, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

* * * * * * * * * * * * * * * * *

"(19) Any alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation, or seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact; . . . ."

and inspection of immigrants upon entry, later became the spouse, parent or child of a United States citizen in the United States, with whom he then established a family. Prior to the adoption of the statute and its predecessor, §7 of the Immigration Act of 1957, P.L. 85-316, 71 Stat. 640, our immigration laws[3] had mandated deportation of immigrants who gained admission through misrepresentation, even when made to escape persecution in the alien's country of national origin and even though, with the passage of time, the immigrant had established a family in the United States. The 1957 Act, which was incorporated into the current statute by §§15 and 16 of the Act of September 26, 1961, P.L. 87-301, 75 Stat. 650, alleviated the harshness of these earlier laws by relieving such immigrants of deportation charges based on entry gained by fraud provided they were otherwise admissible at the time of entry. See House Committee Report on the 1957 Act. (H.R. Rep. 1199, 85th Cong., 1st Sess.) and H.R. Rep. 1086, 87th Cong., 1st Sess., p. 37.

Nothing in the text or history of §241(f) indicates an intent on Congress' part to waive the essential substantive and procedural steps to which an alien must submit himself in order to obtain a visa and enter the United States. On the contrary the history and language of the statute disclose that Congress assumed that the waiver provision would apply only to immigrants who underwent the screening process. Its intent in this respect is evidenced by its direction to the INS in mandatory terms to inspect aliens seeking to enter the United

3 Section 10 Displaced Persons Act of June 25, 1948, 62 Stat. 1013, §11(e) Refugee Relief Act of August 7, 1953; 67 Stat. 405 and §212(a)(19), Immigration and Nationality Act of 1952, 8 U.S.C. §1182(a)(19).

States, 8 U.S.C. §1225 (a),[4] whereas no such mandate was enacted with respect to interrogation of returning United States citizens. The intent was further implied by Congressman Cellar, Chairman of the Judiciary Committee of the House of Representatives, when, in commenting on the original waiver provision (later adopted as §7 of the 1957 Act), he stated:

> "This section also provides for leniency in the consideration of visa applications made by close relatives of United States citizens and aliens lawfully admitted for permanent residence who in the past may have *procured documentation for entry by misrepresentation*" (emphasis supplied) 103 Cong. Rec. 16301.

Similarly Senator Eastland, Chairman of the Senate Judiciary Committee, in commenting on those sections of the 1961 bill incorporating the previous waiver provisions in the current statute stated:

> "Sections 13, 14, 15 and 16 of the bill also incorporate into the basic statute provisions which have been contained in separate enactments. Those provisions relate to the waiver of grounds of inadmissibility and deportability in the cases of certain close relatives of U.S. citizens and lawful permanent residents involving convictions of minor criminal offenses, fraudulent misrepresentation in *connection with applications for visas or admission to the* United States." (Emphasis supplied) 107 Cong. Rec. 19653-19654.

In short, Congress was concerned with fraud on the part of persons seeking to enter *as aliens*. An alien, whether seeking entry as an immigrant or as a non-immigrant (e.g., temporary visitor, temporary worker, foreign official, treaty alien, or the like) must first apply to the proper American authority abroad for a visa (immigrant or non-immigrant) or other prescribed documentary permission to enter. Next he must submit himself at the point of entry to an INS official for "inspection" as an alien. See Gordon and Rosenfield, Immigration Law and Procedure (1972) §§3.1 to 3.28, and 8 U.S.C. §1225(a). Accordingly Congress, in enacting §241(f), concerned itself with the two points in the immigration screening and inspection process where fraud might occur: (1) the procurement of "visas or other documentation" and (2) the "entry."[5]

There is no evidence that Congress had in mind extending the waiver of deportation to an attempt to by-pass completely this immigration screening process and required "inspection" of aliens at the border. If petitioners had entered the United States *as aliens* and had not falsely claimed to be citizens they would have been required first to undergo a screening process designed to ascertain whether they were admissible and to have submitted to an "inspection" of them at the border. To attempt years later to reconstruct the

4 "*§1225. Inspection by Immigration Officers–Powers of officers*

"(a) The inspection, other than the physical and mental examination, of aliens (including alien crewmen) seeking admission or readmission to or the privilege of passing through the United States shall be conducted by immigration officers, except as otherwise provided in regard to special inquiry officers. All aliens arriving at ports of the United States shall be examined by one or more immigration officers at the discretion of the Attorney General and under such regulations as he may prescribe. Immigration officers are authorized and empowered to board and search any vessel, aircraft, railway car, or other conveyance, or vehicle in which they believe aliens are being brought into the United States."

5 The definition of "entry" as "any coming of an alien into the United States," 8 U.S.C. §1101(13), is not inconsistent with the intent to refer to such "coming" in the capacity of an alien or immigrant.

information that would have been obtained from that process in order to ascertain whether they would have been "otherwise admissible" *at the time of entry* is extremely difficult, if not impossible.

Petitioners concede that regardless how §241(f) is construed they would be deportable under §241(a)(1) of the Act, 8 U.S.C. §1251(a)(1), unless they successfully bore the burden of establishing that at the time of entry they satisfied the substantive, qualitative requirements for admission into the United States as prescribed by § 212(a) of the Act, 8 U.S.C. §1182(a) and thus would be "otherwise admissible" as that term is used in §241(f). Section 212(a) lists a series of 31 classes of aliens who shall be ineligible for admission, including among others the insane or mentally retarded, drug addicts, those having contagious disease, the physically disabled, paupers, those convicted of certain offenses, polygamists, prostitutes, laborers likely to adversely affect employment of workers in the United States, and those likely to become public charges if admitted.

Enforcement of §212(a) requires the Government to undertake a thorough and detailed investigation of each applicant for entry into the United States as an immigrant, which begins with his application to the United States counsul in a foreign country for an immigrant visa. At that point the applicant is examined medically to determine whether health requirements are met. Birth and police records are examined to insure that other requirements are satisfied. A passport must be furnished by the applicant and he must furnish fingerprints and sworn answers to detailed questions regarding his residence, prior criminal record, military service, diseases, arrests, employment, skills, narcotics use, organizational memberships, ability to read and prospective means of support in the United States. Following this investigation the consular officer, after interviewing the applicant and reviewing his sworn application and supporting proof, must decide

whether to grant or deny a visa and he must record his decision on a prescribed form. See Gordon & Rosenfield, Immigration Law & Procedure, §3-8b, p. 3-57 (1973).

The United States consular officer is given broad discretionary authority in ruling upon visa applications. For instance, applications may be denied because the "aliens . . ., in the opinion of the consular officer at the time of application for a visa . . . are likely at any time to become public charges." 8 U.S.C. §1182(a)(15), because they are aliens "who the consular officer . . . knows or has reason to believe seek to enter the United States solely, principally, or incidentally to engage in activities which would be prejudicial to the public interest, or endanger the welfare, safety or security of the United States." 8 U.S.C. §1182(a)(27), or because they are aliens who "the consular officer . . . knows or has reasonable ground to believe probably would, after entry (A) engage in activities which would be prohibited by the laws of the United States relating to espionage, sabotage, public disorder . . . or (B) engage in any activity a purpose of which is . . . the control or overthrow of the Government of the United States, by force, violence, or other unconstitutional means . . . ." 8 U.S.C. §1182(a)(29).

Assuming that a visa is issued by the American consul to an immigrant, the visa still represents only prima facie evidence of eligibility and does not assure the holder of admission into the United States. Upon arrival at the port of entry the alien is again examined, this time by INS officers who are also given broad authority to exclude him if found inadmissable. Again the immigrant is examined medically, undergoing quarantine inspection by medical officers of the Public Health Service, 42 C.F.R. §71.136-141, who must also determine whether the alien has any physical or mental afflictions, in which event he may be detained or excluded by the Attorney General. The alien is interrogated by immi-

gration inspectors with respect to the various grounds of ineligibility listed in 8 U.S.C. §1182 and the documentary evidence as to his admissibility is again reviewed. If the inspector concludes that the immigrant is ineligible for admission or if he is in doubt, he may detain the alien for further inquiry or an exclusion proceeding, at which the applicant bears the burden of establishing his admissibility, 8 U.S.C. §1361.

In contrast to the foregoing detailed screening process developed for determination of the admissibility of immigrants, the returning United States citizen needs only to furnish evidence of his citizenship, usually in the form of a passport. Lesser evidence is required upon re-entry through land portals. While the inspector has the right to determine whether the citizenship claim appears to be valid, *United States ex rel. Lapides* v. *Watkins*, 165 F.2d 1017 (2d Cir. 1948), for obvious reasons the examination of re-entering citizens must of necessity be limited as compared with the detailed inspection of aliens seeking entry. Gordon & Rosenfield, Immigration Law & Procedure, §3.16b, p. 3-93 (1973). To suggest, as does our dissenting brother, that since the I.N.S. has the power to verify a claim of United States citizenship made by an entrant, "the solution is in tightened security" overlooks the fact that with over 100 million American citizens re-entering the United States annually, of whom more than 95 million enter through border land portals,[6] a detailed investigation into the citizenship of each returnee would threaten to paralyze international travel on the part of American citizens.

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6 According to the 1972 Annual Report of the Immigration and Naturalization Service, page 25, 105,439,188 citizens entered the United States under claim of citizenship during the year from June 30, 1971 to June 30, 1972, of which 95,209,861 were border-crossers.

Confronted with the burden of establishing that but for their fraud they were "otherwise admissible" at the time of entry petitioners, relying principally upon the Ninth Circuit's decision in *Lee Fook Chuey* v. *INS*, 439 F.2d 244 (9th Cir. 1971), suggest that they should now be permitted *nunc pro tunc* to show that if they had gone through the regular immigration screening process several years ago they would have been found to be admissible. Were we dealing solely with sinple objective facts that could be easily ascertained after the passage of years, such as information recorded in birth or death records, it might be feasible to make a retroactive determination of an alien's qualitative admissibility. But a mere review of the numerous grounds specified by Congress as the bases for finding the alien to be ineligible to receive a visa or for excluding him upon attempted entry persuades us that a *post hoc* investigation would not be an adequate substitute for the exhaustive contemporaneous probe and examination required of the consular and I.N.S. services. In many if not most cases where §241(f) is invoked an inquiry of the type suggested by petitioners could not be instituted until years after the alien's fraudulent entry, since the essential familiar relationship would not have been established at an earlier point in time. With the passage of time it would be difficult if not impossible, for instance, for the United States consul at the alien's country of residence to state whether he would have denied a visa on the ground that in his opinion the alien would have been likely to become a public charge if admitted into the United States, see 8 U.S.C. §1182(a)(15).

For these reasons we are satisfied that Congress did not intend to permit §241(f), particularly in view of its language and legislative history, to be utilized by an alien who had completely circumvented the elaborate immigration visa and screening system established by the Act, thus failing to satisfy

any of its requirements at the time of entry. So to hold would in our view be unnecessarily to erode an essential procedure which has been painstakingly developed for the purpose of screening out those barred from admission on carefully considered qualitative grounds. While §241(f) may be invoked by an immigrant who gained entry as the result of his misrepresentation of some specific fact sought to be elicited in the screening process, this is a far cry from the wholesale fraud implicit in the complete by-passing of that process. To waive deportation for such fraud would seriously weaken the effectiveness of our immigration laws.

Aside from these circumstances showing that Congress did not intend in enacting §241(f) to by-pass the immigration screening process, petitioners' entry under false claims of citizenship at Chula Vista precluded any "inspection" of them as that term is used in 8 U.S.C. §§1225(a) and 1251(a)(2).

If petitioners had not falsely claimed to be citizens, there would have been an "inspection" of them at the border. The initial question faced by us is whether the fact that immigration officials saw them at the time when they falsely claimed to be citizens at Chula Vista constituted an "inspection" within the meaning of 8 U.S.C. §§1225(a) and 1251(a)(2). Faced with this issue two circuits have held, in construing another section of the Act, that there was no "inspection" when an alien gained admittance by falsely representing himself to be an American citizen. *Goon Mee Heung* v. *INS*, 380 F.2d 236 (1st Cir.), cert. denied, 389 U.S. 975 (1967); *Ben Huie* v. *INS*, 349 F.2d 1014 (9th Cir. 1965).

> "There is, unfortunately, no definition of the term 'inspection' anywhere in the act. In addition to section 1255(a), section 1251(a)(2) uses the term in providing that anyone who enters the United States without inspection shall be subject to deportation. Some cases

> under this section and its predecessors have held that false statements to immigration inspectors have the effect of preventing meaningful inspection and, accordingly, render an alien deportable. E.g., United States ex rel. Volpe v. Smith, 7 Cir., 1933, 62 F.2d 808, aff'd on other grounds, 289 U.S. 422, 53 S.Ct. 655, 77 L.Ed. 1298. Others have held to the contrary. E.g., Ex parte Gouthro, E.D., Mich., 1924, 296 F. 506, aff'd sub nom. United States v. Southro, 6 Cir., 1925, 8 F.2d 1023. We find no case, however, holding that the acceptance of a false claim to United States citizenship, enabling an alien to enter the country without registering as an alien, constitutes inspection, or is equivalent to having been inspected. See, e.g., Ben Huie v. INS, 9 Cir., 1965, 349 F.2d 1014." *Goon Mee Heung* v. *INS*, 380 F.2d at 236-37.

Relying on *Errico* and *Lee Fook Chuey*, petitioners urge, in an argument that has been accepted by our dissenting brother Judge Mulligan, that the humanitarian interest in family unity overrides the concern for a procedural system designed to insure immigration law enforcement. It is true that in *Errico* the Supreme Court, in construing §241 (f), relied in part upon Congress' humanitarian purpose. However, that case dealt with aliens who had subjected themselves to the immigrant visa issuance process and not with aliens who, like petitioners, had completely by-passed that process. Furthermore, the issue in *Errico*—whether a quota fraud (as distinguished from a fraud with respect to qualitative admissibility) precludes an alien from being "otherwise admissible"—was a limited one. The suggestion that the Supreme Court implied that §241(f) might be available to deprive the consular service and I.N.S. of any opportunity to screen entering aliens reads too much into *Errico*.

The argument that §241(f) must apply here as a matter of humanitarianism because of the hardship that deportation might work upon the two children who became American citizens as a result of petitioners' fraud ignores the existence of other sections of the Act which authorize the Attorney General, subject to certain specified conditions, to suspend or waive a deportation that would result in "extreme" or "exceptional and extremely unusual" hardship to the alien or to his close relatives in the United States. See, e.g., 8 U.S.C. §§1182(e), (h) and 1254. If §241(f) were construed to mandate such relief whenever entry is gained under a false claim of citizenship, the discretionary and conditional waiver of deportability carved out by these other sections of the Act would in such cases largely be rendered superfluous. Furthermore, solicitous as we all are for the welfare of the two young American citizens here involved, we cannot overlook the fact that if such hardships were the sole test, deportation would automatically be waived in numerous similar cases, such as where an alien surreptitiously enters the United States and raises a family here. Yet such aliens are deportable, see, e.g., *Gambino* v. *INS*, 419 F.2d 1355, *cert. denied*, 399 U.S. 905 (1970), relegating the parties to the aforementioned provisions of the Act authorizing discretionary waiver in hardship cases. We believe the same principles govern here.

In *Lee Fook Chuey* the Ninth Circuit, faced with the issue here confronted, held that §241(f) could be invoked by an alien who obtained entry into the United States upon a false claim of citizenship. It reasoned that the interest in family unity outweighed that of maintaining the integrity of the immigration processing system established by the Act and that it would not ascribe to Congress an intent to limit §241(f) to misrepresentations in the immigration process as distinguished from a by-passing of that process, since

both situations were "functionally similar." With due deference to the distinguished Ninth Circuit we must respectfully disagree. In our view the court in *Lee Fook Chuey* failed to give adequate weight to the purpose of §241(f) as reflected in its legislative history and to the essential part played by the immigration screening process in determining whether an alien who gains entry by fraud is "otherwise admissible." Furthermore the decision appears to be inconsistent with other decisions denying availability of §241(f) to aliens seeking to avoid deportation under functionally similar circumstances. In *Monarrez-Monarrez* v. *INS*, 472 F.2d 119 (9th Cir. 1972), for instance, the court, following our decision in *Gambino* v. *INS*, 419 F.2d 1355, *cert. denied*, 399 U.S. 905 (1970) (stowaway), held that §241(f) does not apply to an alien who surreptitiously enters the United States, thus completely avoiding the immigration screening process, and establishes a family here. Although there is no legally significant distinction between the two types of entries, the effect, assuming both aliens are otherwise admissible, is to reward the alien who by-passed the screening process by representing himself to be a citizen but to deport the alien who did not present himself at the border and thus did not resort to such a brazen device. In similar anologous situations §241(f) has also been held inapplicable. In *Bufalino* v. *INS*, 473 F.2d 728 (3d Cir.), *cert. denied*, 412 U.S. 928 (1973), the Third Circuit, holding §241(f) inapplicable to an alien's reentry into the United States upon a false claim of citizenship, stated:

> "A false claim of citizenship obviously frustrates a major policy of our immigration law which is the inspection of aliens. This petitioner not only brazenly pretended to be a United States citizen but used that

lying assertion to leave and return to the United States on at least three occasions without being inspected as the alien he was and is.

". . . In situations involving 'otherwise inadmissible,' there is nothing in Errico to justify the waiver of the documentary requirements for entry as petitioner seeks here. Matter of K, 9 I. & N. Dec. 585 (B.I.A. 1962). This court in Bufalino v. Holland, 277 F.2d 270 (3 Cir. 1960), cert. den. 364 U.S. 863, 81 S. Ct. 103, 5 L.Ed.2d 85 held that under 8 U.S.C. §1251(a)(5), petitioner was 'otherwise inadmissible' at the time of the entry in question. 277 F.2d at 278. Errico dealt with a problem where the fraudulent citizenship representations were made to circumvent quota restrictions and not to destroy the primary purpose of the regulation, which was to force alien inspection (as in the instant matter)." 473 F.2d at 731-32.

Our view that an alien entering the United States under a false claim of American citizenship should not be treated as one gaining entry as an alien but like one surreptitiously entering the United States finds support in *Goon Mee Heung* v. *INS, supra,* where the court stated:

"Whatever the effect other misrepresentations may arguably have on an alien's being legally considered to have been inspected upon entering the country, we do not now consider; we are here concerned solely with an entry under a fraudulent claim of citizenship. Aliens who enter as citizens, rather than as aliens, are treated substantially differently by immigration authorities. This examination to which citizens are subject is likely to be considerably more perfunctory than that accorded aliens. Gordon & Rosenfield, Immigration

Law and Procedure §316d (1966). Also, aliens are required to fill out alien registration forms, copies of which are retained by the immigration authorities. 8 C.F.R. §§235.4, 264.1; 8 U.S.C. §§1201(b), 1301-1306. Fingerprinting is required for most aliens. 8 U.S.C. §§1201(b), 1301-1302. The net effect, therefore, of a person's entering the country as an admitted alien is that the immigration authorities, in addition to making a closer examination of his right to enter in the first place, require and obtain information and a variety of records that enable them to keep track of the alien after his entry. *Since none of these requirements is applicable to citizens, as alien who enters by claiming to be a citizen has effectively put himself in a quite different position from other admitted aliens, one more comparable to that of a person who slips over the border and who has, therefore, clearly not been inspected.*" (380 F.2d at 237) (Emphasis added).

In our view there comes a point where, in construing §241(f), the integrity of the immigration visa and inspection procedure outweighs the interest in giving relief to certain aliens who have entered this country by unlawful means and raised families here. We believe that that point has been reached here. When due consideration is given to the thousands of aliens who are required to follow the established screening process, it would be inequitable to expand §241(f) to benefit conduct that would wholly evade and stultify that process. The effect could be to encourage disregard for the immigration laws and to render them ineffective since no practical opportunity would be afforded in the I.N.S., in the case of an alien posing as a United States citizen, to conduct an investigation comparable to that mandated in the case of an immigrant seeking entry as such.

The petition for review is dismissed.

MULLIGAN, *Circuit Judge* (dissenting):

The issue before us is whether an alien who obtains entry into this country by falsely claiming United States citizenship, can qualify as "an alien otherwise admissible at the time of entry," within the meaning of Section 241(f) of the Immigration and Nationality Act, 8 U.S.C. §1251(f). An alien "otherwise admissible" is shielded from deportation despite his fraudulent entry if "he is the spouse, parent, or a child of a United States citizen." Mr. and Mrs. Reid, the petitioners here, are admittedly aliens and citizens of British Honduras. They did enter the United States at Chula Vista, California, falsely posing as American citizens. They have since become the parents of two sons who were born here and are citizens of the United States. There is no contention and indeed no evidence that they were not "otherwise admissible at the time of entry." They therefore literally fulfill the requirements of the statute, and yet the Immigration and Naturalization Service (INS) has ordered their deportation and has persuaded a majority of this court to dismiss the petition to review the order. I do not agree and must dissent.

INS has taken the position that the protection of the statute is extended only to those aliens who present themselves as aliens with fraudulent visas. Otherwise, we are advised, the elaborate system of visa issuance might be eroded. The difficulty with this position, which has been adopted by the majority, is of course that the statute makes no such distinction and the only other court to face the identical question has ruled that there is no such distinction. *Lee Fook Chuey* v. *INS*, 439 F.2d 244 (9th Cir. 1971).[1]

1 I do not overlook *Bufalino* v. *INS*, 473 F.2d 728 (3d Cir.), cert. denied, 412 U.S. 928 (1973), cited by the majority for the proposition that the Third Circuit has held that Section 241(f) is inapplicable to an alien's reentry into the United States on a false claim of citizenship.

The statute is not limited to fraudulent visa-bearers but in so many words applies to those persons who have "procured visas or other documentation, *or* entry into the United States by fraud or misrepresentation." (emphasis added).

Although the language of the statute is clear, the majority opinion, which apparently concedes that the Reids are literally within its protection, seeks to avoid the provision, invoking the shades of Learned Hand for the general proposition that it is somewhat dangerous to read the language of a statute literally. It is at least equally dangerous to take Learned Hand literally, without examining the problems of construction involved in the case he was deciding.[2] Even the quoted excerpt from *Giuseppi* v. *Walling*, 144 F.2d 608, 624 (2d Cir. 1944), indicates that Judge Hand was referring to an "unforeseen situation," not contemplated by the draftsmen of the statute. He still observed that the words employed are "by far the most decisive evidence" of the intent of the authors.

I cannot possibly imagine, in any event, that it was unforeseen that an alien might seek to gain entry to the United States by posing as a citizen. The alien can secure admission fraudulently either with a visa procured by misrepresentation or by falsely posing as an American citizen. The latter

Judge McLaughlin's opinion, containing the language relied upon expressed his view only. The separate concurring opinion of Judge Adams, concurred in by Judge Van Dusen, dismissed the petition for review there on other grounds and specifically found it necessary to determine the appliability of Section 241(f). See 473 F.2d at 739 n.4.

2 We must read statutes "literally" just as we must so read the opinions of courts. We do it everyday. It is only when a literal reading would lead to some absurdity or grotesquerie that we are free to do otherwise. *Sturges* v. *Crowninshield*, 17 U.S. (4 Wheat.) 70, 106-07 (1819). Otherwise, of course, we would be anticipating Orwell by exactly a decade, and could sympathize with More's Utopians, who would have no lawyers amongst them since they considered it our profession to disguise matters.

alternative could not realistically have been overlooked by the Congress and the language of the statute covers both situations.

In support of the position of INS, the majority argues that the Supreme Court "apparently" had the Hand principles of statutory construction in mind when it refused to apply Section 241(f) literally in *INS* v. *Errico*, 385 U.S. 214 (1966). If the Court had the Hand "principles" in mind in that case, it concealed that fact from all but the clairvoyant. The Court made no secret of its approach to the statute when it decided that an alien who misrepresented his status for the purpose of evading quantitative quota restrictions, was nonetheless entitled to the protection of Section 241(f). The Court eschewed a literal interpretation which would have been fatal to the alien's case because it found that the major purpose of the statute was humanitarian–the preservation of family ties and the family unit. The Court also stated that a statute mandating deportation must be construed in favor of the alien:

> Even if there were some doubt as to the correct construction of the statute, the doubt should be resolved in favor of the alien. As this Court has held, even where a punitive section is being construed:
>
> "We resolve the doubts in favor of that construction because deportation is a drastic measure and at times the equivalent of banishment or exile, *Delgadillo* v. *Carmichael*, 332 U.S. 388. It is the forfeiture for misconduct of a residence in this country. Such a forfeiture is a penalty. To construe this statutory provision less generously to the alien might find support in logic. But since the stakes are considerable for the individual, we will not assume that Congress meant to trench on his freedom beyond that which is required by the narrowest of several possible meanings of the words used." *Fong Haw Tan* v. *Phelan*, 333 U.S. 6, 10.
>
> See also *Barber* v. *Gonzales*, 347 U.S. 637, 642-643. The 1957 Act was not a punitive statute, and § 7 of that Act, now codified as §241(f), in particular was designed to accomplish a humanitarian result. We conclude that to give meaning to the statute in the light of its humanitarian purpose of preventing the breaking up of families composed in part at least of American citizens, the conflict between the circuits must be resolved in favor of the aliens, and that the *Errico* decision must be affirmed and the *Scott* decision revised.

385 U.S. at 255.

In sum, the canons of construction applied by the Supreme Court in *Errico* are not conjectural but are explicit and support the position of the Reids here. I submit that the statute is clear and that no construction is necessary at all. In *Errico*, the Supreme Court avoided a literal reading of Section 241(f) because it would thwart the humanitarian purposes of the statute.[3] Here, a literal reading of the

3 In addition, the Court stated that "the administrative authorities have consistently held that §241(f) waives any deportation charges that result directly from the misrepresentation regardless of the section of the statute under which the charge was brought . . . ." 385 U.S. at 217. In support of this statement the Court cited the opinion of the Board of Immigration Appeals in *Matter of Y*_____, 8 I. & N. Dec. 143 (1959).

In *Matter of Y*_____, the Board held that Section 7 of the 1957 Act required termination of the deportation proceedings when the alien had entered this country by misrepresenting himself as an American citizen and the ground for deportation was entry without inspection. In *Matter of K* _____, 9 I. & N. Dec. 585 (1962), the Board reached a similar result under Section 241(f). The Board adhered to this position following the Supreme Court's decision in *Errico, Matter of Lee*, 13 I. & N. Dec. 214 (1967), but the Attorney General, overruling the Board ordered Lee deported, 13 I. & N. Dec. 214, 218 (1969). The Ninth Circuit, however, did not find the Attorney General's opinion persuasive and reversed. *Lee Fook Chuey* v. *INS*, 439 F.2d 244 (1971).

statute concededly supports the position of the Reids and fully comports with the humanitarian purposes of the legislation. I therefore fail to understand how *Errico* now compels a construction which would contort the plain language of the statute and thwart its humanitarian purposes.

The majority opinion appeals to the legislative history of Section 241(f) for support of the thesis that the congressional intent was not to waive the essential substantive or procedural steps to which an alien must submit in order to obtain a visa. Of course, legislative history is "a legitimate aid to the interpretation of a statute where its language is doubtful or obscure . . . . But when taking the act as a whole, the effect of the language used is clear to the court, extraneous aid like this can not control the interpretation." *Wisconsin R.R. Comm'n* v. *Chicago, B. & Q. R.R.*, 257 U.S. 563, 589 (1922) (citation deleted); accord, *Holtzman* v. *Schlesinger*, 484 F.2d 1307, 1314 (2d Cir. 1973).

I find the language lucid but in any event I find nothing in the legislative history to support the suggested dichotomy. Section 241(f) by its terms applies to aliens who have "procured . . . entry into the United States by fraud or misrepresentation." This is the clause the majority has excised from the statute. The term "entry" into the United States is defined in 8 U.S.C. §1101(13). "The term 'entry' means *any* coming of an alien into the United States . . . ." (emphasis added). The definition does not say visa-bearing alien; it says any coming of an alien. The Reid's entry is within the statute and there is no ambiguity compelling resort to legislative history.

Moreover, the historical excursion in my view is fruitless. I have found nothing in the available legislative history to support the proposition now sought to be advanced by the majority. Even the emphasized language of Senator

Eastland's statement set forth in the majority opinion refers to fraudulent misrepresentations in connection with visa applications or admission into the United States. Aside from the total silence with respect to any design to reserve the protection of the statute to visa-bearing aliens, there is language in the legislative history which the Supreme Court referred to in *Errico*[4] indicating that the principal beneficiaries of the law were Mexican nationals who were able to avoid border restrictions. If the Congress had in mind the so-called "wet backs" entrants, then it is difficult to comprehend that it intended only visa-carrying entrants.[5] In short, I see no evidence of any congressional intent at odds with the clear language of the statute. As Judge Friendly observed about

4 The Supreme Court stated:

> The only specific reference to the part of § 7 that deals with close relatives of United States citizens or residents is in the House Committee Report, and it says only that most of the persons eligible for relief would be
>
> > "Mexican nationals, who, during the time when border-control operations suffered from regrettable laxity, were able to enter the United States, establish a family in this country, and were subsequently found to reside in the United States illegally."
>
> Without doubt most of the aliens who had obtained entry into the United States by illegal means were Mexicans, because it has always been far easier to avoid border restrictions when entering from Mexico than when entering from countries that do not have a common land border with the United States. There is nothing in the Committee Report to indicate that relief under the section was intended to be restricted to Mexicans, however. Neither does it follow that, because Mexicans are not subject to quota restrictions, therefore nationals of countries that do have a quota must be within the quota to obtain relief.

385 U.S. 233-24.

5 Since *Errico*, surreptitious entrants have been held not to be within Section 241(f). However, *Monarrez-Monarrez* v. *INS*, 472 F.2d 119 (9th Cir. 1972), and *Gambino* v. *INS*, 419 F.2d 1355 (2d Cir.), cert. denied, 399 U.S. 905 (1970), cited by the majority as "functionally" similar to the circumstances of this case and inconsistent with *Lee Fook Chuey*, are readily distinguishable. *Gambino* involved a "stowaway," which this court considered to be

the majority position in his dissenting opinion in *Peter Pan Fabrics, Inc.* v. *Martin Weiner Corp.*, 274 F.2d 487, 491 (2d Cir. 1960), "[T]he voice so audible to them is silent to me."

Aside from this, I cannot accept the argument that the Reids here, by the "brazen" statement that they were citizens of the United States, thus frustrated the screening processes of INS. If they are this porous, then the solution is a tightened security and not the mutilation of Section 241(f).

The argument of the majority that 8 U.S.C. §1225(a) supports the position that Congress intended to limit the benefits of Section 241(f) only to those aliens who admitted alienage, is not persuasive. While Section 1225(a) does not mandate the interrogation of returning United States citizens, the section does provide in part that, "any immigration officer . . . shall have power to administer oaths and to take and consider evidence of or from any person touching the privilege of *any alien or person he believes or suspects to be an alien to enter, reenter, pass through, or reside in the United States . . . .*" (emphasis added). See also *United States ex rel. Lapides* v. *Watkins*, 165 F.2d 1017 (2d Cir. 1948). Moreover, the pertinent INS regulation, 8 C.F.R. §235.1(b), provides:

> *U.S. citizens.* A person claiming U.S. citizenship must establish that fact to the examining immigration officer's satisfaction and must present a U.S. passport if such passport is required under the provisions of 22 CFR Part 53. *If such an applicant for admission fails to satisfy the examining immigration officer that he is a U.S. citizen, he shall thereafter be inspected as an alien.* (emphasis added).

a special type of alien, and moreover, at the time of his entry (1921) Gambino was excludable as a stowaway. Judge Smith termed the part of the legislative history relating to Mexicans as "ambiguous." The INS in its brief here employs the same adjective. In any event, the courts have disregarded it since it does conflict with the language of the statute. Accordingly, in *Monarrez-Monarrez*, a surreptitious entry (concealment in an auto trunk) was not considered by the court to be entry gained by "fraud or misrepresentation," and on this basis the court distinguished *Lee Fook Chuey*.

See also 8 U.S.C. §1323(a); Gordon & Rosenfield, Immigration Law & Procedure §3.2 (1973).

It is also significant that 8 U.S.C. §1361 cited by the majority as part of the screening process permitting the detention of aliens and casting upon them the burden of providing admissibility is not limited to visa applicants. It provides:

> Whenever any person makes application for a visa or any other document required for entry, *or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person* . . . . (emphasis added).

In short, INS is not helpless in the face of a claim by an alien that he is a United States citizen. If he is suspected of being an alien, he must be inspected as an alien. I fail to see how recourse to Sections 1225(a) or 1361 advances the position of the majority by a jot or a tittle.[6] The blunder[7] of the constable here results, in effect, in the deportation of the petitioners as well as their native-born American sons.

6 The quarantine inspection provided for in 42 C.F.R. §§71.136 to 71.141 and referred to in the majority opinion is applicable to persons entering the United States and is not limited to aliens. Even 42 C.F.R. Part 34 providing for medical examination of aliens applies to all aliens not simply visa applicants.

7 The precise nature of the fraud employed here at entry is not clear. The Reids represent that "[a]t the time of their entry each

I indeed agree that an alien who applies for a visa in advance of his entry into the United States is more readily investigated than one who poses as an American citizen at the point of entry. But this point is not raised in the legislative history and is not mentioned in the statute.[8] The administrative inconvenience to INS in making a *post hoc* investigation of the Reids' qualitative admissibility is *de minimis*, in my view, in contrast to what the dismissal of this petition accomplishes.

Mr. and Mrs. Reid are both gainfully employed in this country, have never been arrested since arriving and belong to no subversive organizations. There is no hint or suggestion that they are or have been qualitatively deficient in any of the categories mentioned by the majority. They have, moreover, become the parents of two native-born American boys who, by reason of their infancy (now ages 2 and 4), have no alternative but involuntary exile.

of them, in response to a question from the Immigration Officer on duty, indicated that he was an American citizen, either by an affirmative answer or by remaining silent." The INS has not challenged this representation.

8 *Ben Huie* v. *INS*, 349 F.2d 1014 (9th Cir. 1965), relied upon by the majority involves 8 U.S.C. §1251 (a)(2) which in substance authorizes the deportation of aliens who enter the United States without inspection. The alien there apparently did not qualify under Section 241(f) which is in issue here. The Ninth Circuit's later opinion in *Lee Fook Chuey* makes the proper distinction. 439 F.2d at 249. See also *Cabuco-Flores* v. *INS*, 477 F.2d 108, 110-11 (9th Cir. 1973), which indicates that Section 241(f) is determinative. *Goon Mee Heung* v. *INS*, 380 F.2d 236 (1st Cir.), cert. denied, 389 U.S. 975 (1967), also relied upon in the majority opinion, involves a request for adjustment of status under 8 U.S.C. §1255 and again does not mention Section 241(f) which is in issue here. The distinction between deportation which involves humanitarian considerations and adjustment of status or naturalization was made by this court in *Yik Shuen Eng* v. *INS*, 464 F.2d 1265, 1267-68 (2d Cir. 1972).

The sins of the father are now literally visited upon the sons. I have thought that this was what the statute was designed to avoid.

At this deportation hearing, the petitioner Reid was asked if he had anything to say before the proceedings were closed. His answer was:

> I have got something to say, but I don't know whether it's going to make any difference. On the back of the form you say to show reason why you should not be deported. We have plenty reason why we shouldn't be deported. For one we have two kids and if we are deported we ain't got no home to go back to. Everything we had was abandoned. Taking two kids back there like sending two kids to die from malnutrition [sic].

Even if the statute were ambiguous, I think it should be construed in favor of the Reids and their infant native-born sons. Where they are literally within its protection, as the majority admits, recourse to a supposed principle of construction which makes clear language suspect is neither convincing nor persuasive. I believe there is "plenty reason" to set aside the order of deportation and I emphatically dissent from the holding of the majority.

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United States Court of Appeals

SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the thirteenth day of February , one thousand nine hundred and seventy-four.

Present: HON. J. EDWARD LUMBARD

HON. WALTER R. MANSFIELD

HON. WILLIAM H. MULLIGAN

Circuit Judges.

Robert Reid and
Nadia Alice Reid,

Petitioners,

v.

Immigration and Naturalization
Service,

Respondent.

73-1067

A petition for review of an order of the Board of Immigration Appeals.

This cause came on to be heard on the Administrative record of the Immigration and Naturalization Service, and was argued by counsel

On consideration whereof, it is now ordered, adjudged and decreed that the petition be and it hereby is dismissed with costs to be taxed against the petitioners.

A. DANIEL FUSARO,
Clerk

VINCENT A. CARLIN,
Chief Deputy Clerk

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

ORDER TO SHOW CAUSE and NOTICE OF HEARING

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA:

In the Matter of)
ROBERT REID)
)
Respondent.)

To: ROBERT REID (name) File No. A19 363 194

17 Spring Street, Danbury, Connecticut
(Address (number, street, city, state, and ZIP code))

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of British Honduras and a citizen of British Honduras.
3. You entered the United States at Chula Vista, California on or about November 29, 1968; (date)
4. You then entered the United States by falsely claiming to be a United States citizen;
5. You have never been a citizen of the United States;
6. You did not then present yourself to a United States Immigration Officer for inspection as an alien;

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a) (2) of the Immigration and Nationality Act, in that, you entered the United States without inspection.

WHEREFORE, YOU ARE ORDERED to appear for hearing before a Special Inquiry Officer of the Immigration and Naturalization Service of the United States Department of Justice at Room 362, Post Office Building, 135 High Street, Hartford, Connecticut on Monday, December 13, 1971 at 3:00 p.m. and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated: November 22, 1971

IMMIGRATION AND NATURALIZATION SERVICE

(Signature and title)

DISTRICT DIRECTOR, HARTFORD, CONN.
(City and state)

Form I-221
(Rev. 3-30-67)

(over)

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
File No. A19 363 194 & A19 363 195 - Hartford, Connecticut May 8, 1972

In the Matter of	)	
	)	
ROBERT REID AND HIS WIFE	)	
NADIA ALICE REID	)	IN DEPORTATION PROCEEDINGS
	)	
Respondents	)	

CHARGE AS TO EACH: I&N Act. Sec. 241(a) (2) (8 U.S.C. 1251 (a) (2)) Entry without inspection

APPLICATION BY EACH: Termination of proceedings I&N Act. Sec. 241(f) (8 U.S.C. 1251(f)) - In the alternative voluntary departure

IN BEHALF OF THE RESPONDENTS

Darius J. Spain, Esquire
142 Deer Hill Avenue
Danbury, Connecticut

IN BEHALF OF SERVICE

Ralph J. Smith, Trial Attorney

DECISION OF THE SPECIAL INQUIRY OFFICER

The respondents a married couple are natives and citizens of Honduras. The male respondent entered the United States on about November 2?, 1968. The female respondent entered on or about January 3, 1969. Each entered by falsely claiming to be a United States citizen. Neither has ever been a citizen of the United States. Neither presented himself to a United States Immigration officer for inspection as an alien at the time of his entry into the United States.

Each of the respondents admitted that all of the factual allegations in the relating Order to Show Cause are true and each admitted deportability as charged in the Order to Show Cause relating to him. Each of the respondents is found to be deportable as charged in the relating Order to Show Cause based on his own admissions.

The respondents have applied for termination of these proceedings under the provision of Section 241(f) of the Immigration and Nationality Act. They have submitted the birth certificates of their two children born in the United States, a boy born in New York City on November 2, 1969, and a second boy born in Danbury, Connecticut on April 4, 1971.

The Attorney General of the United States, in an opinion dated May 1, 1969, discussed the question as to whether the benefits of Section 241(f) of the Immigration and Nationality Act are available to an alien who entered the United States on a false claim of United States citizenship. He stated "I find nothing in the language of Section 241(f), it's legislative history or the Errico opinion to support the view that Congress intended to permit the complete circumvention of the Immigration visa system established by the Act. Such a circumvention would result from a holding that Section 241(f) applied to an alien who neither was granted nor applied for an immigrant visa, but obtained his initial entry by posing as a citizen." TThe attorney

General further stated "an alien who has not even applied for an immigrant visa, much less been examined and granted such a visa, has satisfied none of our Immigration requirements and cannot properly be treated as an 'otherwise admissable' alien." (A Matter of Lee I.D. 1960).

The Court of Appeals for the Ninth Circuit rejected the conclusion reached by the Attorney General in the Matter of Lee, Supra. (Lee Fook Chuey V. Ins. 439 F 2d 244, (9th Cir. 1971)).

However, the Board has not accepted the decision of the Ninth Circuit in Lee Fook Chuey as binding upon it. The Board stated "we are aware of no other Circuit which has followed the Ninth Circuit holdings in Lee Fook Chuey." Noting that a petition for Certiorari has been filed to review the decision of the Ninth Circuit in a similar case, the Board states "until the matter has been definitively resolved we are bound to accept the Attorney General's decision in the Matter of Lee (Fook Chuey), I.D. 1960 (A.G. 1969)." (Matter of Yee I.D. 2104, BIA Nov. 8, 1971.)

In the Matter of Yee, Supra, the Board stated that it is not bound to follow the Ninth Circuit Holding because "the fact that a lower Federal Court has rejected a legal conclusion of this Board does not require us to recede from that conclusion in other jurisdictions. The same principal would apply with at least equal vigor to an opinion of the Attorney General, such as the Attorney General's decision in Matter of Lee (Fook Chuey), Supra."

The respondents entered the United States on false claims of United States citizenship. They did not secure appropriate documents with which to enter and they were not inspected as aliens. They completely circumvented the Immigration visa system established by the Act in that they neither applied for nor were granted immigrant visas but obtained initial entry by posing as citizens. They have satisfied none of the applicable Immigration requirements. He cannot properly be treated as an "otherwise admissible" alien. Their applications for the benefits of Section 241(f) of the Immigration and Nationality Act will be denied on the authority of the Attorney General's opinion in Matter of Lee, Supra, and the Board of Immigration Appeals decision in Matter of Yee, Supra.

The respondents have applied in the alternative for the privilege of voluntary departure from the United States without expense to the government in lieu of deportation. Neither has ever been arrested. Neither has ever been a member of a subversive organization. They have the funds with which to effect their departure without expense to the United States Government. Each has stated he is willing to depart within the time and conditions set for his departure.

The male respondent stated that deportation or required departure from the United States would result in considerable hardship to his family because he has one child two years of age and another

eight months of age both of whom were born in the United States and further because when the respondents came to the United States they disposed of their possessions in British Honduras and would have no home to which they can return.

The respondents are statutorily eligible for the privilege of voluntary departure. No objection to the grant thereof has been made by the Immigration and Naturalization Service. That privilege will be granted to them as a matter of discretion. The period for voluntary departure will be extended to six months, subject to extension by the District Director, if appropriate, to give the respondents an opportunity to seek proper documentation with which to enter the United States for permanent residence.

For the purpose of this decision, the allegations of fact contained in each of the Orders to Show Cause are adopted as findings of fact as to the respondent to whom it relates and the charge contained in each of the Orders to Show Cause is adopted as a conclusion of law as to the respondent to whom it relates.

ORDER: It is ordered that the application of each respondent for termination of these proceedings under the provisions of Section 241(f) of the Immigration and Nationality Act be denied.

IT IS FURTHER ORDERED that in lieu of an order of deportation each of the respondents be granted voluntary departure without expense to the government on or before June 20, 1972 or any extension beyond that date as may be granted by the District Director and under such conditions as he shall direct.

IT IS FURTHER ORDERED that if either or both of the respondents fail to depart voluntarily when and as required that the privilege of voluntary departure shall be withdrawn without further notice or proceedings and the following order shall become immediately effective as to each such respondent: The respondent shall be deported from the United States to British Honduras on the charge contained in the Order to Show Cause.

EUGENE C. CASSIDY - SPECIAL INQUIRY OFFICER

UNITED STATES DEPARTMENT OF JUSTICE
Board of Immigration Appeals

Files: A19 363 194 - Hartford
A19 363 195

In re: ROBERT REID
NADIA ALICE REID

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Benjamin Globman, Esquire
915 Asylum Avenue
Hartford, Conmecticut 06105
(Brief filed)

CHARGES:

Order: Section 241(a)(2), I&N Act (8 U.S.C. 1251(a)(2))- Entry without inspection (both aliens)

Lodged: None

APPLICATION: Termination of proceedings under section 241(f) of the Immigration and Nationality Act (both aliens)

This is an appeal from an order of a special inquiry officer dated May 8, 1972 finding the respondents deportable on the above-stated charge, denying their motion for termination of proceedings under section 241(f) of the Immigration and Nationality Act, and granting voluntary departure. The appeal will be dismissed.

The respondents are aliens, husband and wife, both natives of British Honduras who entered the United States at Chula Vista, California, on January 3, 1969 falsely claiming to be United States citizens.

A19 363 194
A19 363 195

At the hearing before the special inquiry officer, at which they were represented by counsel, the respondents admitted the truth of the allegations of the Orders to Show Cause and conceded deportability. Counsel moved for termination of the proceedings under section 241(f) of the Act, and submitted the birth certificates of their two children born in the United States. The special inquiry officer found them deportable as charged and denied the application to terminate the proceedings, pursuant to decisions of this Board holding that section 241(f) does not benefit aliens who entered the United States on a false claim of United States citizenship, citing the Attorney General's decision in Matter of Lee, Interim Decision 1960 (BIA 1967; AG 1969). While that decision was reversed in Lee Fook Chuey v INS, 439 F.2d 244 (9 Cir. 1971), we are bound by the Attorney General's decision and adhere to it, Matter of Mangabat, Interim Decision 2131 (BIA 1972).

After careful evaluation of the entire record, we are satisfied that deportability was established by evidence which is clear, convincing and unequivocal, and that the respondents are ineligible for the benefits under section 241(f). We therefore dismiss the appeals. It is to be noted that at the hearing on December 13, 1971 the special inquiry officer advised that he would give the respondents six months to depart voluntarily, and he did this in effect since his order granting them 30 days voluntary departure was not entered until May 8, 1972. The additional time was given the respondents to afford them an opportunity to seek proper documentation with which to enter the United States for permanent residence. In accordance with our usual practice we will give the respondents the same amount of time to depart as the special inquiry officer granted in his order, namely 30 days.

ORDER: The appeals are dismissed.

A19 363 194
A19 363 195

IT IS FURTHER ORDERED that, pursuant to the special inquiry officer's order, the respondents be permitted to depart from the United States voluntarily within 30 days from the date of this decision or any extension beyond that time as may be granted by the District Director; and that, in the event of failure so to depart, the respondents shall be deported as provided in the special inquiry officer's order.

Chairman

Supreme Court, U. S.
FILED
JUN 24 1974
MICHAEL RODAK, JR., CLERK

No. 73-1541

In the Supreme Court of the United States

OCTOBER TERM, 1973

ROBERT REID AND NADIA ALICE REID, PETITIONERS

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1541

ROBERT REID AND NADIA ALICE REID, PETITIONERS

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

Petitioners, husband and wife, are aliens [1] who entered the United States at the Chula Vista, California, Port of Entry by falsely representing themselves to be United States citizens.[2] Thereafter, petitioners had two children, who became American citizens upon their birth in this country.

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[1] They are citizens of British Honduras.

[2] Petitioner Robert Reid entered on November 29, 1968, and petitioner Nadia Reid on January 3, 1969.

On November 22, 1971, petitioners were served with a Notice of Hearing and an Order to Show Cause, charging that they were deportable under Section 241(a)(2) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1251(a)(2), as aliens who had entered the United States without inspection as immigrants (Pet. App. 3). At the deportation hearing, petitioners conceded deportability. However, they moved for a termination of deportation proceedings under Section 241(f) of the Act, as amended, 8 U.S.C. 1251(f), and submitted the birth certificates of their two children born in the United States after their illegal entry.[3] The special inquiry officer found them deportable as charged and denied the application to terminate the proceedings (Pet. App. 4).[4] The Board of Immigration Appeals dismissed petitioners' appeal, holding that Section 241(f) does not apply to aliens who enter the United States on a false claim of citizenship (Pet. App. 5).

Petitioners then filed a petition for review challenging the Board's determination. On February 13, 1974, the United States Court of Appeals for the Second Circuit dismissed the petition, one judge dissenting (Pet. App. 1). The majority held that the legislative history showed that Section 241(f) was concerned with aliens who commit frauds while seeking to enter as such, and not with those aliens who enter under false claims of citizenship, and thus completely evade the immigration screening system established by other portions of the Act. The court further concluded that (Pet. App. 1-1762):

> In our view there comes a point where, in construing §241(f), the integrity of the immigration visa and inspection procedure outweighs the interest in giving relief to certain aliens who have entered this country by unlawful means and raised families here. We believe that that point has been reached here. When due consideration is given to the thousands of aliens who are required to follow the established screening process, it would be inequitable to expand §241(f) to benefit conduct that would wholly evade and stultify that process. The effect could be to encourage disregard for the immigration laws and to render them ineffective since no practical opportunity would be afforded [to] the I.N.S., in the case of an alien posing as a United States citizen, to conduct an investigation comparable to that mandated in the case of an immigrant seeking entry as such.

Petitioners contend that because their entry into the United States was gained by a fraudulent claim of citizenship and because they are parents of United States citizens, their deportation is waived by 8 U.S.C. 1251(f). We disagree with this contention for the reasons set forth in our petition for a writ of certiorari in *Immigration and Naturalization Service* v. *Echeverria*, No. 73-1917.[5] Nevertheless, since we agree with petitioners that this decision conflicts with the holdings of the Ninth Circuit in *Lee Fook Chuey* v. *Immigration and Naturalization Service*, 439 F. 2d 244, and *Echeverria*, we do not oppose this petition for a writ of certiorari. Instead, we suggest that

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[3] 8 U.S.C. 1251(f) provides that:

> The provisions * * * relating to the deportation of aliens * * * on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a child of a United States citizen * * *.

[4] Petitioners were granted the privilege of voluntary departure.

[5] We are sending petitioners a copy of that petition.

the Court either consider this case with *Echeverria*, or defer disposition of this petition pending the decision in *Echeverria*.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

JUNE 1974.

In the Supreme Court of the United States

Supreme Court, U. S.
FILED
NOV 27 1974
MICHAEL RODAK, JR., CLERK

October Term, 1974

No. 73-1541

ROBERT REID and NADIA ALICE REID,
Petitioners

vs.

IMMIGRATION AND NATURALIZATION SERVICE,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals

FOR THE SECOND CIRCUIT

PETITIONERS BRIEF

BENJAMIN GLOBMAN
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Globman & Cooper
Counsel for Petitioners
915 Asylum Avenue
Hartford, Connecticut 06105

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(a) OPINION BELOW

Robert and Nadia Reid vs. Immigration and Naturalization Service 492 F. 2d 251-264 (1974) (Opinion printed in full in appendix to Petition for Certiorari at page 1)

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(b) JURISDICTION

The Jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1) and 28 U.S.C. 2350 as recodified; recodification 28 U.S.C. Title 158, secs. 2341-2352.

(c) and (d) The Questions Presented for Review and Statute

1. The broad issue in this case is whether petitioners are saved from deportation by Sec. 241 (f) of the Immigration and Nationality Act. 8 U.S.C. Sec. 1251 (f) which provides:

"The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence.

June 27, 1952, ch. 477, Title II, ch. 5, § 241, 66 Stat. 204; July 18, 1956, c. 629, Title III, § 301 (b), (c), 70 Stat. 575; July 14, 1960, Pub. L. 86-648, § 9, 74 Stat. 505; Sept. 26, 1961, Pub. L. 87-301, § 16, 75 Stat. 655; Oct. 3, 1965, Pub. L. 89-236, § 11 (e), 79 Stat. 918."

2. More narrowly the issue is whether aliens who obtain entry into the United States under a false claim of citizenship and who become parents of children born in the United States, can qualify as aliens "otherwise admissible at the time of entry"

within the meaning of Sec. 241 (f), of the Immigration and Nationality Act.

3. In view of the express provision of the Statute (Sec. 241 (f) Immigration and Nationality Act), exempting from deportation aliens who "procure . . . entry into the United States by fraud or misrepresentation" and who are the parents of a United States citizen, did the United States Court of Appeals (Second Circuit) properly conclude that the exemption did not extend to aliens who procured such entry by falsely claiming United States Citizenship?

4. Is the application of the Statute (Sec. 241 (f) Immigration and Nationality Act) to be limited to aliens who gain entry by a particular species of fraud, namely, a fraud or misrepresentation in the course of obtaining immigrant visas?

5. Is the scope of this Court's decision in Immigration and Naturalization Service vs. Errico, 385 U.S. 214 (1966) limited in its application to aliens who gain entry by fraud in the course of obtaining immigrant visas, in view of the express language of the Statute (Sec. 241 (f)), its legislative history, congressional intent and humanitarian purpose?

(e) Statement of Case

Petitioners are a married couple, natives of Honduras. Each entered the U.S. by falsing claiming to be U.S. citizens. Two children were born in the United States after their entry. Petitioners have no arrest record and neither has ever been a member of a subversive organization. Deportation or required departure from the United States would result in considerable hardship to the family because one child is age two and another eight months, (at time of hearing) and because when petitioners came to the U.S. they disposed of their possessions in British Honduras and would have no home to which they can return.

In November 1971, petitioners were served with an Order to Show Cause why they should not be deported upon the following charges, (see Appendix p. 3); That they entered the United States by falsely claiming to be citizens, that they

never were citizens and did not present themselves to Immigration Officers for inspection as aliens, and that they were subject to deportation under Section 241 (a) (2) of the Immigration and Nationality Act by entering without inspection.

A hearing took place on December 13, 1971 before Special Inquiry Officer Eugene C. Cassidy. He issued his decision on May 10, 1972 (Appendix p. 4), finding that the petitioners were deportable as charged in the Order to Show Cause. At the hearing each petitioner applied for termination of the proceedings under the provisions of Section 241 (f) of the Immigration and Nationality Act. The Special Inquiry Officer denied these applications, but ordered that in lieu of deportation each petitioner be granted voluntary departure. He also issued an Order of Deportation as to each petitioner, in the event they did not depart voluntarily. They have not departed.

Petitioners appealed from the Special Inquiry Officer's Decision and Orders to the Board of Immigration Appeals, which dismissed the appeals on December 12, 1972, and affirmed the Orders of Deportation. (Appendix p. 5)

Petitioners filed a petition to review with the Second Circuit Court of Appeals on January 10, 1973, pursuant to Sec. 106 of the Immigration and Nationality Act, 8 U.S.C. Sec. 1105a. On February 13, 1974, the Second Circuit Court of Appeals dismissed the petition. (Mulligan, J. dissenting) Petitioners here seek a review of the decision and Judgment ordering the dismissal.

(f) SUMMARY OF ARGUMENT

A. Petitioners are entitled to the benefit of the Statute, section 241 (f) of the Immigration and Nationality Act by the explicit language of the Statute which applies to "Aliens who have. . .procured. . .entry into the United States by fraud or misrepresentation (Argument Section B)

B. If the statute requires interpretation, it must be construed in view of its legislative history and purpose which fully support application of the statute to aliens who gain entry by falsely claiming citizenship. (Argument Section C)

C. The interest of the aliens with family ties must be afforded great weight, and the humanitarian importance of maintaining family unity should be the controlling factor, in determining that these petitioners qualify as being "otherwise admissible" within the meaning of the Statute. (Argument Section D)

D. Any doubt in construing the Statute should be resolved in favor of the aliens (Argument Section D)

E. Petitioners qualify as "otherwise admissible" aliens who procured entry by fraud, within the scope of IMMIGRATION SERVICE v. ERRICO, Supra. (Conclusion)

F. The decision of the Court Below in effect amends the Statute by judicial construction. (Conclusion)

(g) ARGUMENT

A. Basic Claims of Parties

The basic claim of the government in the court below and before this court is that Section 241 (f) of the Immigration and Nationality Act does not encompass aliens who fraudulently enter the country by misrepresenting themselves as citizens, thereby "having avoided inspection as aliens." (Respondent's Brief, Second Circuit Court of Appeals) Stated another way the claim of the government is that Section 241 (f) applies only to aliens who gain entry by a particular species of fraud, namely, a fraud or misrepresentation in the course of obtaining immigrant visas. The court below sustained these claims largely on the basis

that petitioners by their fraudulent misrepresentations evaded inspection and investigation as aliens and therefore the Act did not apply to them. (Decision, Second Circuit, 492 F2d 251 at page 257)

Petitioners basic contention is that they are entitled to the benefit of Section 241 (f) by virtue of its explicit language, legislative history and purpose.

B. The Explicit Language of the Statute.

The respondent seeks to limit the application of the statute to aliens who gain entry by fraud in the process of obtaining immigrant visas. But the explicit language of the statute is that it applies to "aliens who have sought to procure, or have procured visas or other documentation or entry into the United States by fraud or misrepresentation." (Section 241 (f) Immigration and Nationality Act, emphasis added)

The government's contention here and the decision of the court below flies in the face of the express words "or entry" and in effect completely eliminates these words from the statute. As Circuit Judge Mulligan stated in his dissenting opinion "The statute is not limited to fraudulent visa-bearers but in so many words applies to those persons who have 'procured visas or other documentation, or entry into the United States by fraud or misrepresentation' " (492 F 2d 251 at page 260-261)

The explicit language of the Statute is also noted with emphasis by the Fifth Circuit Court of Appeals in

GONZALEZ de MORENO, PETITIONER V. UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE, RESPONDENT, 492 F. 2d 532 where the court stated at page 536:

"By its terms § 241 (f) provides relief for those who obtain visas, other documentation, or entry by means of fraud or misrepresentation. The use of the disjunctive indicates that the section was intended to apply to aliens who had no need to lie or misrepresent in the course of obtaining a visa, but whose actual entry into this country hinged on a misstatement of fact – whether intentional or innocent. One such class of

aliens would be those falsely representing themselves as American citizens. Indeed, given the requirement of a visa or recognized substitute document for the entry of nationals of most foreign countries and the improbability that one who had honestly obtained a visa would have reason to lie upon presenting his documentation at the border, the most logical application of the separate 'fraudulent entry' provision is to precisely those aliens in petitioner's position – those who entered under a claim of citizenship."

Thus the express language of the statute clearly encompasses the type of fraud practised by petitioners here by which they gained entry into the United States. The statute makes no such distinction as respondent seeks here. Petitioners submit that in view of the explicit language of the statute, there is no proper basis for discriminating among the techniques of fraud. The government's distinction would mean that the alien would be subject to deportation when claiming falsely that he was a citizen and would not be subject to deportation when falsely claiming that he was a skilled mechanic.

The decision of this court in Immigration Service vs. Errico, 385 U.S. 214, 87 S. Ct. 473 does not support respondent's claims in this regard.

See C Legislative History below at p. 9.

As the Ninth Circuit Court stated in Lee Fook Chuey vs. Immigration and Naturalization Service 439 F 2d. at page 248, in rejecting a similar contention of the government as to the type of fraud "This court will not base its decision on a fortuitous technical difference between the two types of fraud."

The court below, by focusing its attention on an interpretation of the phrase "otherwise admissible" ignores and distorts the true meaning of the explicit words "or entry into the United States by fraud...". In view of this explicit language of the statute which is lucid and crystal clear, as to the application of the statute to petitioners, no interpretation is indeed necessary or proper.

C. Legislative History and Purpose.

If by some stretch of the imagination the applicability of Section 241 (f) to these petitioners and the language used is considered ambiguous, then the statute need be construed in the light of its legislative history and purpose. The history and purpose is fully set forth in the Errico case, supra, and need not be repeated here in toto. However, since the court below based its decision largely on the basis that petitioners, by their fraud evaded inspection and investigation as aliens, we turn to a consideration of such history as will reveal congressional intent to embrace within the coverage of the statute those aliens who by their fraud evaded inspection and investigation as well as quota requirements.

First the purpose of the statute was basically humanitarian, to assist aliens who have fraudulently obtained entry, to maintain family unity. "The fundamental purpose of this legislation was to unite families... It was wholly consistent with this purpose for congress to provide that immigrants who gained admission by misrepresentation, perhaps many years ago, should not be deported. . .in light of its humanitarian purpose of presenting the breaking up of families composed in part at least of American citizens."

Immigration Service vs. Errico, cited above.

Lee Fook Chuey vs. Immigration Service, cited above.

Second, nowhere in the statute or legislative history is there the slightest indication that Congress intended or was even aware of any possible preference of visa-bearing aliens over aliens who enter by a false claim of citizenship at the border.

Gonzales de Moreno, Supra, 492 F 2d 532 at 536-7.

If anything the legislative comment accompanying Section 241 (f) indicates the contrary since it identified a primary concern with "border control" laxity, not visa-bearing laxity. The House Committee Report accompanying Section 7 of the 1957 Act identifies the primary beneficiaries as being:

"Mexican Nationals who, during the time when border-control

operations suffered from regrettable laxity were able to enter the United States and establish a family in this country. . .

H.R. Rep. No. 1199, 85th Cong. 1st Sess. p. 11, U.S. Code and Admin. News 1957, p. 2024.

This House Report also specifically refers to the beneficaries of the Act as being aliens guilty of misrepresentation "in obtaining documentation or entry.

Third: This Court is Errico (385 U.S. at page 221) discussed in detail the predecessor statute, particularly Section 7 of the 1957 Act, its history and purpose. The court then commented as follows:

"This section waived deportation under certain circumstances for two classes of aliens who had entered by fraud or misrepresentation. First, an alien who was 'the spouse, parent, or a child of a U.S. citizen. . .' was saved from deportation for his fraud if he was 'otherwise admissible at the time of entry.' Second, an alien who entered during the postwar period and misrepresented his nationality, place of birth, identity, or residence was saved from deportation if he was 'otherwise admissible at the time of entry' and if he could 'establish to the satisfaction of the Attorney General that the misrepresentation was predicted upon the alien's fear of persecution because of race, religion or political opinion if repatriated to his former home or residence, and was not committed for the purpose of evading the quota restrictions of the immigration laws or an investigation of the alien at the place of his former home, or residence, or elsewhere.' (Emphasis supplied)

"The language would be meaningless if an alien who committed fraud for the purpose of evading quota restrictions would be deported as not 'otherwise admissible at the time of entry' Congress must have felt that aliens who evaded quota restrictions by fraud would be 'otherwise admissible at the time of entry' or it would not have found it necessary to provide further that, in the case of an alien not possessing a close familial relationship to a U.S. citizen or lawful permanent resident, the fraud must not be for the purpose of evading quota restrictions.

"This conclusion is reinforced by the fact that Congress further specified that the aliens who were not close relatives of U.S. citizens must establish that their fraud was not committed for the purpose of evading an investigation. Fraud for the purpose of evading an investigation, if forgiven by the statute, would clearly leave the alien 'otherwise admissible' if there were no other disqualifying factor. Elementary principles of statutory construction lead to the conclusion that Congress meant to specify two specific types of fraud that would leave an alien 'otherwise admissible' but that would nonetheless bar relief to those aliens who could not claim close relationship with a U.S. citizen or alien lawfully admitted for permanent residence." Emphasis supplied.

From the language of the court, and the legislative history, it clearly appears that application of the statute was intended to encompass two types of fraud situations, one involving an evasion of quota restrictions and the other involving an evasion of investigation and inspection.

Fourth: The court below cited a statement by Senator Eastland, Chairman of Judiciary Committee of the Senate, in commenting on those sections of the 1961 bill incorporating the prior waiver provisions in the current statute:

"Sections, 13, 14, 15 and 16 of the bill also incorporate into the basic statute provisions which have been contained in separate enactments. These provisions relate to the waiver of grounds of inadmissibility and deportability in the cases of certain close relatives of U.S. citizens and lawful permanent residents involving convictions of minor criminal offenses, fraudulent misrepresentation in connection with applications for visas or admission to the United States." Emphasis supplied.

107 Cong. Rec. 19653-19654.

As Judge Mulligan stated in his dissenting opinion in the court below, "Even the emphasized language of Senator Eastland's statement set forth in the majority opinion refers to fraudulent misrepresentations in connection with visa applications or admission into the United States." (492 F. 2d 251, p. 263)

In summary, the legislative history and purpose of the statute supports petitioners' view that the statute is not limited in its application to visa or document bearing aliens, but applies also to aliens who by misrepresentation evade inspection or investigation or who misrepresent themselves as citizens.

D. "OTHERWISE ADMISSIBLE" – Interpretation and the Balance of Factors

The government's position is, and the Court below held that the Statute is subject to interpretation and that the petitioners could not be considered "otherwise admissible" because of their evasion of inspection and investigation as aliens. If "otherwise admissible" is to be interpreted here then it must needs be interpreted, first, in light of the other language of the Statute, which, as has already been pointed out, specifically provides for aliens who enter by fraud other than a visa or documentation fraud. Secondly "otherwise admissible" must be construed in light of the history of the statute, which as noted above in Section C. clearly indicates the application of the statute to petitioners despite their purported evasion of inspection and investigation. Thirdly, the Government contends that petitioners here are evading the entire immigration and inspection process. This is not so. Although the aliens have entered by fraud, the Government may nevertheless obtain the necessary information to determine qualitative admissibility. The investigatory process may precede the determination of the claim for relief under Sec. 241 (f). The Government's ability to regulate the quality of immigrants is not significantly impaired. See Lee Fook Chuey supra.

As the Court stated in Lee Fook Chuey, "When Congress enacted this provision, (sec. 241 (f) it was reconciling strong and conflicting policies. Congress was dealing with problems arising from violations of the visa system, and had to do so in the context of ongoing family ties ..." (439 F. 2d at p. 250)

The interests of the aliens with family ties must be afforded great weight in view of the history and humanitarian purpose of the statute.

Those aliens who misrepresented essential facts to gain entry, as here, but who posses the required family relationship present a special case. While they fraudulently gained entry, nevertheless, Congress has decided in the interests of maintaining family unity that they should be given special relief. Despite the alleged circumvention of the statutory immigration system, such consideration is outweighed by the humanitarian importance of maintaining family unity. This is the holding of Errico and Lee Fook Chuey and also Gonzalez de Moreno.

IMMIGRATION SERVICE v. ERRICO, supra
LEE FOOK CHUEY v. IMMIGRATION SERVICE, supra
GONZALEZ de MORENO v. IMMIGRATION SERVICE, supra.

Fourthly, as Circuit Court Judge Mulligan stated in his dissent:

"INS is not helpless in the face of a claim by an alien that he is a U.S. citizen. If he is suspected of being an alien he must be inspected as an alien. . . the blunder of the constable here results, in effect, in the deportation of the petitioners as well as their native born American sons.

"I indeed agree that an alien who applies for a visa in advance of his entry into the United States is more readily investigated than one who poses as an American citizen at the point of entry. But this point is not raised in the legislative history and is not mentioned in the statute. The administrative inconvenience to INS in making a post hoc investigation of the Reids' qualitative admissibility is de minimis, in my view, in contrast to what the dismissal of this petition accomplishes.

"Mr. and Mrs. Reid are both gainfully employed in this country, have never been arrested since arriving and belong to no subversive organizations. There is no hint or suggestion that they are or have been qualitatively deficient in any of the categories mentioned by the majority. They have, moreover, become the parents of two native-born American boys who, by reason of their infancy (now ages 2 and 4), have no alternative but involuntary exile."

Finally, even if there was some doubt as to the correct con-

struction of the Statute, the doubt should be resolved in favor of the aliens. Deportation is a drastic measure. It is the forfeiture for misconduct of a residence in the United States. This court should not assume that Congress meant to trench on petitioners' freedom beyond that which is required by the narrowest of meanings of the words used.

IMMIGRATION SERVICE v. ERRICO, supra
DELGADILLO v. CARMICHAEL, 332 U.S. 388
FONG HAW TAN v. PHELAN, 333 U.S. 10.

E. THE STOWAWAY AND OVERSTAY CASES

The respondent and the court below attempt to draw an analogy between this case and the stowaway and overstay cases. The analogy is not valid. In Gambino v. I.N.S. 419 F. 2d 1355 (2nd Circuit 1970), the court pointed out that stowaways are given special treatment through the Immigration and Nationality Act and Congress could not possibly have intended 241 (f) to apply to stowaways. Also 241 (f) applies only where entry is gained by fraudulent misrepresentation, which is not involved in the case of a stowaway. "Fraud and misrepresentation cannot be equated to surreptitious entry without bending the language of Sections 241 (a) and 241 (f) into shapelessness and without ignoring the history of Section 241 (f) recited in Errico."

MONARREZ-MONARREZ v. I.N.S. 472 F. 2d 119
(9th Cir. 1972)

And in the case of temporary visitors who have overstayed, 241 (f) does not apply because there is no misrepresentation made in obtaining the visa which relates to the charge of overstaying.

CABUCO-FLORES v. I.N.S. 477 F. 2d 108 (9th Cir. 1973)

We agree that Section 241 (f) applies only where the fraud involved is related to the deportation charge. It is here. In the Order to Show Cause (Appendix p. 3) the petitioners are specifically charged with "entering the U.S. by falsely claiming to be a U.S. Citizen" and not presenting themselves for inspection. The government itself recognizes the direct relationship between the fraud and the charge of evading inspection.

H. CONCLUSION

Petitioners are entitled to relief from deportation by the express language of Section 241 (f), its legislative history and humanitarian purpose. Petitioners who obtained entry by fraudulently posing as citizens are fully qualified as "otherwise admissible" within the scope of the decision of this Court in Errico (supra) and their claims are fully supported by the decisions of the Ninth Circuit Court of Appeals in Lee Fook Chuey (supra), and the decision of the Fifth Circuit Court of Appeals in Gonzalez de Moreno, (supra).

The Court below in effect has amended the statute by judicial interpretation where interpretation is hardly warranted, by eliminating from its application aliens who procure entry by fraudulently posing as citizens. If the statute is to be amended it should be done by Congress.

The decision of the Court below should be reversed.

Dated at Hartford, Conn.
this 12th Day of November, 1974.

Respectfully submitted
Petitioners
By Benjamin Globman
Harry Cooper
their attorneys

APPENDIX

No. 73 – 1541

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DOCKET ENTRIES

Order to Show Cause – November 22, 1971
Administrative Hearing – December 13, 1971
Decision Special Inquiry Officer – May 8, 1972
Decision Board Immigration Appeals – December 12, 1972
Petition to Review Second Circuit Court of Appeals – Jan. 10, 1973
Decision Court Below – Feb. 13, 1974
Petition Writ Certiorari Filed – April 15, 1974
Certiorari Granted – October 15, 1974

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

ORDER TO SHOW CAUSE and NOTICE OF HEARING

In Deportation Proceedings under Section 242 of the Immigration and Nationality Act

UNITED STATES OF AMERICA:

In the Matter of)
ROBERT REID)
)
Respondent)

To: ROBERT REID (name) File No. A19 363 194

17 Spring Street, Danbury, Connecticut
Address (number, street, city, state, and ZIP code)

UPON inquiry conducted by the Immigration and Naturalization Service, it is alleged that:

1. You are not a citizen or national of the United States;
2. You are a native of British Honduras and a citizen of British Honduras;
3. You entered the United States at Chula Vista, California on or about November 29, 1968; (date)
4. You then entered the United States by falsely claiming to be a United States citizen;
5. You have never been a citizen of the United States;
6. You did not then present yourself to a United States Immigration Officer for inspection as an alien;

AND on the basis of the foregoing allegations, it is charged that you are subject to deportation pursuant to the following provision(s) of law:

Section 241(a) (2) of the Immigration and Nationality Act, in that, you entered the United States without inspection.

WHEREFORE, YOU ARE ORDERED to appear for hearing before a Special Inquiry Officer of the Immigration and Naturalization Service of the United States Department of Justice at Room 367, Post Office Building, 135 High Street, Hartford, Connecticut on Monday, December 13, 1971 at 3:00 p.m. and show cause why you should not be deported from the United States on the charge(s) set forth above.

Dated: November 22, 1971

IMMIGRATION AND NATURALIZATION SERVICE

W. J. Kennedy
(signature and title of officer)
DISTRICT DIRECTOR, HARTFORD, CONN.
(City and state)

Form I-221
(Rev. 3-30-67)

(over)

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
File No. A19 363 194 & A19 363 195 - Hartford, Connecticut May 8, 1972

In the Matter of ROBERT REID AND HIS WIFE NADIA ALICE REID Respondents	)	IN DEPORTATION PROCEEDINGS
CHARGE AS TO EACH:		I&N Act. Sec. 241(a) (2) (8 U.S.C. 1251 (a) (2)) Entry without inspection
APPLICATION BY EACH:		Termination of proceedings I&N Act. Sec. 241(f) (8 U.S.C. 1251(f)) - In the alternative voluntary departure
IN BEHALF OF THE RESPONDENTS		IN BEHALF OF SERVICE
Darius J. Spain, Esquire 142 Deer Hill Avenue Danbury, Connecticut		Ralph J. Smith, Trial Attorney

DECISION OF THE SPECIAL INQUIRY OFFICER

The respondents a married couple are natives and citizens of Honduras. The male respondent entered the United States on about November 29, 1968. The female respondent entered on or about January 3, 1969. Each entered by falsely claiming to be a United States citizen. Neither has ever been a citizen of the United States. Neither presented himself to a United States Immigration officer for inspection as an alien at the time of his entry into the United States.

Each of the respondents admitted that all of the factual allegations in the relating Order to Show Cause are true and each admitted deportability as charged in the Order to Sho Cause relating to him. Each of the respondents is found to be deportable as charged in the relating Order to Show Cause based on his own admissions.

The respondents have applied for termination of these proceedings under the provision of Section 241(f) of the Immigration and Nationality Act. They have submitted the birth certificates of their two children born in the United States, a boy born in New York City on November 2, 1969, and a second boy born in Danbury, Connecticut on April 4, 1971.

The Attorney General of the United States, in an opinion dated May 1, 1969, discussed the question as to whether the benefits of Section 241(f) of the Immigration and Nationality Act are available to an alien who entered the United States on a false claim of United States citizenship. He stated "I find nothing in the language of Section 241(f), it's legislative history or the Errico opinion to support the view that Congress intended to permit the complete circumvention of the Immigration visa system established by the Act. Such a circumvention would result from a holding that Section 241(f) applied to an alien who neither was granted nor applied for an immigrant visa, but obtained his initial entry by posing as a citizen." TThe attorney

General further stated "an alien who has not even applied for an immigrant visa, much less been examined and granted such a visa, has satisfied none of our Immigration requirements and cannot properly be treated as an 'otherwise admissable' alien." (A Matter of Lee I.D. 1960).

The Court of Appeals for the Ninth Circuit rejected the conclusion reached by the Attorney General in the Matter of Lee, Supra. (Lee Fook Chuey V. Ins. 439 F 2d 244, (9th Cir. 1971)).

However, the Board has not accepted the decision of the Ninth Circuit in Lee Fook Chuey as binding upon it. The Board stated "we are aware of no other Circuit which has followed the Ninth Circuit holdings in Lee Fook Chuey." Noting that a petition for Certiorari has been filed to review the decision of the Ninth Circuit in a similar case, the Board states "until the matter has been definitively resolved we are bound to accept the Attorney General's decision in the Matter of Lee (Fook Chuey), I.D. 1960 (A.G. 1969)." (Matter of Yee I.D. 2104, BIA Nov. 8, 1971.)

In the Matter of Yee, Supra, the Board stated that it is not bound to follow the Ninth Circuit Holding because "the fact that a lower Federal Court has rejected a legal conclusion of this Board does not require us to recede from that conclusion in other jurisdictions. The same principal would apply with at least equal vigor to an opinion of the Attorney General, such as the Attorney General's decision in Matter of Lee (Fook Chuey), Supra."

The respondents entered the United States on false claims of United States citizenship. They did not secure appropriate documents with which to enter and they were not inspected as aliens. They completely circumvented the Immigration visa system established by the Act in that they neither applied for nor were granted immigrant visas but obtained initial entry by posing as citizens. They have satisfied none of the applicable Immigration requirements. He cannot properly be treated as an "otherwise admissible" alien. Their applications for the benefits of Section 241(f) of the Immigration and Nationality Act will be denied on the authority of the Attorney General's opinion in Matter of Lee, Supra, and the Board of Immigration Appeals decision in Matter of Yee, Supra.

The respondents have applied in the alternative for the privilege of voluntary departure from the United States without expense to the government in lieu of deportation. Neither has ever been arrested. Neither has ever been a member of a subversive organization. They have the funds with which to effect their departure without expense to the United States Government. Each has stated he is willing to depart within the time and conditions set for his departure.

The male respondent stated that deportation or required departure from the United States would result in considerable hardship to his family because he has one child two years of age and another

eight months of age both of whom were born in the United States and further because when the respondents came to the United States they disposed of their possessions in British Honduras and would have no home to which they can return.

The respondents are statutorily eligible for the privilege of voluntary departure. No objection to the grant thereof has been made by the Immigration and Naturalization Service. That privilege will be granted to them as a matter of discretion. The period for voluntary departure will be extended to six months, subject to extension by the District Director, if appropriate, to give the respondents an opportunity to seek proper documentation with which to enter the United States for permanent residence.

For the purpose of this decision, the allegations of fact contained in each of the Orders to Show Cause are adopted as findings of fact as to the respondent to whom it relates and the charge contained in each of the Orders to Show Cause is adopted as a conclusion of law as to the respondent to whom it relates.

ORDER: It is ordered that the application of each respondent for termination of these proceedings under the provisions of Section 241(f) of the Immigration and Nationality Act be denied.

IT IS FURTHER ORDERED that in lieu of an order of deportation each of the respondents be granted voluntary departure without expense to the government on or before June 20, 1972 or any extension beyond that date as may be granted by the District Director and under such conditions as he shall direct.

IT IS FURTHER ORDERED that if either or both of the respondents fail to depart voluntarily when and as required that the privilege of voluntary departure shall be withdrawn without further notice or proceedings and the following order shall become immediately effective as to each such respondent: The respondent shall be deported from the United States to British Honduras on the charge contained in the Order to Show Cause.

EUGENE C. CASSIDY - SPECIAL INQUIRY OFFICER

UNITED STATES DEPARTMENT OF JUSTICE
Board of Immigration Appeals

12/12/72

Files: A19 363 194 - Hartford
A19 363 195

In re: ROBERT REID
NADIA ALICE REID

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENTS: Benjamin Globman, Esquire
915 Asylum Avenue
Hartford, Connecticut 06105
(Brief filed)

CHARGES:

Order: Section 241(a)(2), I&N Act (8 U.S.C. 1251(a)(2))- Entry without inspection (both aliens)

Lodged: None

APPLICATION: Termination of proceedings under section 241(f) of the Immigration and Nationality Act (both aliens)

This is an appeal from an order of a special inquiry officer dated May 8, 1972 finding the respondents deportable on the above-stated charge, denying their motion for termination of proceedings under section 241(f) of the Immigration and Nationality Act, and granting voluntary departure. The appeal will be dismissed.

The respondents are aliens, husband and wife, both natives of British Honduras who entered the United States at Chula Vista, California, on January 3, 1969 falsely claiming to be United States citizens.

A19 363 194
A19 363 195

At the hearing before the special inquiry officer, at which they were represented by counsel, the respondents admitted the truth of the allegations of the Orders to Show Cause and conceded deportability. Counsel moved for termination of the proceedings under section 241(f) of the Act, and submitted the birth certificates of their two children born in the United States. The special inquiry officer found them deportable as charged and denied the application to terminate the proceedings, pursuant to decisions of this Board holding that section 241(f) does not benefit aliens who entered the United States on a false claim of United States citizenship, citing the Attorney General's decision in Matter of Lee, Interim Decision 1960 (BIA 1967; AG 1969). While that decision was reversed in Lee Fook Chuey v INS, 439 F.2d 244 (9 Cir. 1971), we are bound by the Attorney General's decision and adhere to it, Matter of Mangabat, Interim Decision 2131 (BIA 1972).

After careful evaluation of the entire record, we are satisfied that deportability was established by evidence which is clear, convincing and unequivocal, and that the respondents are ineligible for the benefits under section 241(f). We therefore dismiss the appeals. It is to be noted that at the hearing on December 13, 1971 the special inquiry officer advised that he would give the respondents six months to depart voluntarily, and he did this in effect since his order granting them 30 days voluntary departure was not entered until May 8, 1972. The additional time was given the respondents to afford them an opportunity to seek proper documentation with which to enter the United States for permanent residence. In accordance with our usual practice we will give the respondents the same amount of time to depart as the special inquiry officer granted in his order, namely 30 days.

ORDER: The appeals are dismissed.

A19 363 194
A19 363 195

IT IS FURTHER ORDERED that, pursuant to the special inquiry officer's order, the respondents be permitted to depart from the United States voluntarily within 30 days from the date of this decision or any extension beyond that time as may be granted by the District Director; and that, in the event of failure so to depart, the respondents shall be deported as provided in the special inquiry officer's order.

Chairman

Supreme Court, U. S.
FILED
DEC 26 1974
MICHAEL RODAK, JR., CLERK

No. 73-1541

In the Supreme Court of the United States

OCTOBER TERM, 1974

ROBERT REID AND NADIA ALICE REID, PETITIONERS

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

ROBERT H. BORK,
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HENRY E. PETERSEN,
Assistant Attorney General,
JEWEL S. LAFONTANT,
Deputy Solicitor General,
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Department of Justice,
Washington, D.C. 20530.

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In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1541

ROBERT REID AND NADIA ALICE REID, PETITIONERS

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

OPINION BELOW

The opinion of the court of appeals (Cert. Pet. App. 1)[1] is reported at 492 F. 2d 251.

JURISDICTION

The judgment of the court of appeals was entered on February 13, 1974. A petition for a writ of certiorari was filed on April 15, 1974, and was granted on October 15, 1974. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

[1] "Cert. Pet. App." and "Pet. Br. App." refer respectively to the appendix to the petition for a writ of certiorari and to the appendix to petitioners' brief on the merits.

QUESTION PRESENTED

Whether an alien who circumvents the entire visa issuance and inspection process by making a false claim of citizenship is exempt from deportation under Section 241(f) of the Immigration and Nationality Act, 8 U.S.C. 1251(f).

STATUTE INVOLVED

Section 241(f) of the Immigration and Nationality Act, 66 Stat. 204, as amended, 8 U.S.C. 1251(f), provides as follows:

> The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence.

STATEMENT

Petitioners, husband and wife, are citizens of British Honduras who entered the United States at the Chula Vista, California, Port of Entry by falsely stating that they were United States citizens.[2] Petitioner Robert Reid entered on November 29, 1968, and petitioner Nadia Reid on January 3, 1969 (Pet. Br. App. 3–4). Petitioners' children were born in the

[2] Documentary evidence of citizenship is not generally required of those entering the United States at ports of entry along the Mexican and Canadian borders. See *infra*, pp. 23–24.

United States in 1969 and 1971, and are thus American citizens (Pet. Br. App. 4a).

On November 22, 1971, petitioners were served with a notice of hearing and an order to show cause, charging that they were deportable under Section 241(a)(2) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1251(a)(2), as aliens who had entered the United States without inspection as aliens, claiming to be citizens of the United States (Pet. Br. App. 3). At the deportation hearing, petitioners moved for a termination of deportation proceedings under Section 241(f) of the Act, which excepts from deportation certain aliens who have "procured visas or other documentation, or entry into the United States by fraud or misrepresentation." It applies to aliens who bear specified close relationships to United States citizens or resident aliens, and who were "otherwise admissable at the time of entry." In support of their claim, petitioners submitted birth certificates of their two children born in the United States after their illegal entry.

The special inquiry officer and the Board of Immigration Appeals both upheld petitioners' deportability on the ground that an alien who circumvents the visa issuance and inspection process by a false claim of citizenship is not entitled to Section 241(f) relief (Cert. Pet. App. 4, 5). The Special Inquiry Officer granted petitioners the privilege of voluntary departure in lieu of deportation (Cert. Pet. App. 4d).[3]

[3] An alien who is deported may not re-enter this country without the special permission of the Attorney General, 8 U.S.C. 1182(a)(17). A deportable alien who departs voluntarily within the specified time avoids this disability.

On petition for review, the United States Court of Appeals for the Second Circuit affirmed the finding of deportability, one judge dissenting (Cert. Pet. App. 1). The court construed Section 241(f) as exempting from deportation only those aliens who gained entry into the United States as the result of fraud in obtaining immigrant visas or fraud upon being inspected as immigrants at the point of entry. It held that this section is inapplicable to those aliens who enter under a false claim of citizenship and thereby completely evade the immigration screening system established by other portions of the Act. The court below concluded (Cert. Pet. App. 1–1762):

> In our view there comes a point where, in construing § 241(f), the integrity of the immigration visa and inspection procedure outweighs the interest in giving relief to certain aliens who have entered this country by unlawful means and raised families here. We believe that that point has been reached here. When due consideration is given to the thousands of aliens who are required to follow the established screening process, it would be inequitable to expand § 241(f) to benefit conduct that would wholly evade and stultify that process. The effect could be to encourage disregard for the immigration laws and to render them ineffective since no practical opportunity would be afforded in the I.N.S., in the case of an alien posing as a United States citizen, to conduct an investigation comparable to that mandated in the case of an immigrant seeking entry as such.

INTRODUCTION AND SUMMARY OF ARGUMENT

Section 241(f) of the Immigration and Nationality Act, as amended, 8 U.S.C. 1251(f), relieves certain close relatives of United States citizens or resident aliens, if they were "otherwise admissible at the time of entry," from the "provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation * * *." The "provisions of this section" referred to in Section 241(f) are in Section 241(a)(1), 8 U.S.C. 1251(a)(1); they require deportation of those aliens who were excludable by law at the time of their entry. The particular ground of exclusion from which close relatives are relieved by Section 241(f) is contained in Section 212(a)(19) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(19), which excludes aliens who have entered or sought entry through fraud.

Section 241(f), as its language indicates, is quite limited in scope. It does not waive all grounds for deportation of persons who are close relatives of United States citizens, but only deportability on the ground that they were excludable at the time of entry for having procured documents or entry through fraud.[4]

[4] Deportation grounds are specified in 18 separate clauses of Section 241. Clause (1) encompasses 31 grounds for exclusion (and consequent deportability) set forth in Section 212(a) of the Immigration and Nationality Act, 8 U.S.C. 1182(a), as

Furthermore, Section 241(f) applies only if the alien was "otherwise admissible at the time of entry." It thus represents a congressional conclusion that, under certain limited circumstances, the interest in family unity sufficiently outweighs the interest in the integrity of the immigration procedures to justify nondeportability of otherwise deportable aliens.[5]

The issue in this case is the identification of the precise circumstances in which this congressional judgment applies. This Court has considered Section 241(f) once before, in *Immigration and Naturalization Service* v. *Errico*, 385 U.S. 214, and determined, despite the literal language of the section, that its special legislative history compels the conclusion that the waiver applies to aliens who procure immigration visas by fraudulently claiming entitlement to quota preference status. Neither the statutory language, the legislative history, nor the general statutory scheme, however, justifies concluding that the waiver also extends to aliens who evade the visa and inspection procedures entirely by gaining entry through a false claim of citizenship. Moreover, the extension of Section 241(f) to those who have entirely evaded the visa and inspection procedures would have extremely deleterious effects on the enforcement of the immigration laws. The congressional preference for family unity

well as grounds for exclusion under earlier laws. Significantly, none of these deportation grounds, other than misrepresentation at the time of entry, is mentioned in Section 241(f).

[5] In other sections of the Act, Congress has recognized that family unity or other special considerations may justify discretionary waivers of immigration procedures on a case by case basis. See pp. 19–21, *infra*.

over the lesser adverse effects on the immigration system of false statements in visas or on alien inspection at entry does not indicate a similar preference when the careful procedures Congress has prescribed for screening aliens upon admission have been totally evaded through fraud.[6]

ARGUMENT

I

THE LANGUAGE OF SECTION 241(f) INDICATES IT APPLIES ONLY TO THOSE WHO COMMITTED FRAUD WHILE SEEKING ENTRY AS ALIENS

Section 241(f) applies to certain aliens "otherwise admissible at the time of entry" who "have procured visas or other documentation, or entry into the United States by fraud." Both quoted phrases indicate that Congress was assuming the applicability of established immigration procedures, and did not intend the waiver of Section 241(f) to apply to those who enter by falsely claiming citizenship.

[6] Since petitioners here concealed their alienage entirely, they avoided any investigation by immigration officials. Two courts of appeals have considered a related situation, in which aliens obtain temporary admission as non-immigrants and fraudulently conceal their intention to remain. In that situation, the Immigration Service is put on notice of the applicant's alienage, and does conduct an investigation before admitting him. Nevertheless, the courts have correctly held that such aliens are not entitled to the benefits of Section 241(f). *Iqbal* v. *Immigration and Naturalization Service*, C.A. 9, No. 72–2539, decided June 27, 1973; *Arda* v. *Immigration and Naturalization Service*, C.A. 6, No. 72–1798, decided April 11, 1973, certiorari denied, 414 U.S. 873. *A fortiori*, those who have not even disclosed their alienage should not be so entitled.

The immigrant visa requirement, Section 211 of the Immigration and Nationality Act (8 U.S.C. 1181), is essential to the effective operation of the system of controls established by the immigration laws. See 1 Gordon and Rosenfield, *Immigration Law and Procedure,* Sections 2.29, 2.30 (1974 Rev. ed.). The statute directs that "no immigrant shall be admitted into the United States unless at the time of application for admission he * * * has a valid unexpired immigrant visa". Section 211(a), Immigration and Nationality Act, 8 U.S.C. 1181(a). An immigrant is defined as "every alien except an alien who is within one of the * * * classes of non-immigrant aliens." Section 101(a)(15), Immigration and Nationality Act, 8 U.S.C. 1101(a)(15); 1 Gordon and Rosenfield, *Immigration Law and Procedure,* Section 2.5b (1974 rev. ed.).[7]

Any alien seeking entry into the United States as an immigrant is therefore required to obtain an immigrant visa from American authorities abroad. It is the responsibility of the consular office to check the alien's qualifications and to issue a visa only if he finds the alien qualified for entry as an immigrant. Section 221 (a) and (g) of the Act (8 U.S.C. 1201(a) and (g)). To aid the consul in this preliminary determination the alien must submit an application under oath, undergo registration, fingerprinting and prescribed mental and physical examinations, and present numerous documents bearing on eligibility, including

[7] Even aliens admitted as non-immigrants must obtain a visa and submit to the administrative screening and inspection process. See 8 U.S.C. 1184, 1222, and 1301.

a passport and birth record, police certificates, prison records, and military records. Sections 221 and 222 of the Act (8 U.S.C. 1201 and 1202).

The immigrant visa requirement is regarded by Congress as so fundamental that it has not permitted any waiver of it, except for returning lawful residents. Section 211(b), Immigration and Nationality Act, 8 U.S.C. 1181(b); see also *United States ex rel. Polymeris* v. *Trudell,* 284 U.S. 279.

The consul's issuance of a visa, however, does not assure the holder of admission to the United States, if, at arrival, the alien is found to be inadmissable. Section 221(h) of the Immigration and Nationality Act (8 U.S.C. 1201(h)). The alien is required to undergo further inspection at the port of entry. Section 235(a) of the Act (8 U.S.C. 1225(a)). This border examination includes a close inspection of the alien's travel documents and a reappraisal of his admissibility. See 1 Gordon and Rosenfield, *Immigration Law and Procedure,* Sections 3.14, 3.16 (1974 rev. ed.). The immigration officer is authorized to detain all arriving aliens who are not "clearly and beyond a doubt entitled to land." Section 235(b) (8 U.S.C. 1225(b)). See also *United States* v. *Sing Tuck,* 194 U.S. 161.[8]

This two-step procedure explains the reference in Section 241(f) to fraud either in the procurement of visas or other documents, or on entry. The intent was to waive deportability for aliens with certain close

[8] Returning citizens undergo no similar inspection on entry. Although documentary evidence of citizenship is required of those entering at sea and air ports, oral affirmation of citizenship is generally sufficient for entry at ports of entry along the Canadian and Mexican borders. See *infra,* pp. 23–24.

family ties to lawful residents who had presented themselves as aliens to immigration authorities, but had committed fraud either in obtaining the visas or other documentation necessary for entry, or during the entry inspection procedures. If the statute referred only to misrepresentation in the applications for visas or other documentation, it would not cover situations in which the visa application was truthful, but the alien concealed on entry a relevant change in his situation—*e.g.*, an alien child of a citizen might conceal the fact that he had married (see 8 U.S.C. 1153(a)(1)).

That Congress intended the benefits of Section 241 (f) to be available only to persons who sought entry as aliens is confirmed by the limitation to aliens "otherwise admissible at the time of entry."[9] An alien who

[9] An alien who gains entry by fraudulently claiming citizenship instead of by acquiring the immigrant visa or other documentation required as a condition of admissibility by 8 U.S.C. 1182(a)(20) could never be "otherwise admissible", and for that reason alone would not be entitled to the benefits of Section 241(f). This Court, in *Immigration and Naturalization Service* v. *Errico*, 385 U.S. 214, noted that Section 241(f) has consistently been interpreted as waiving not only the alien's fraud, but also "any deportation charge that results directly from the misrepresentation". *Id.* at 217. As the dissent points out (*id.* at 227, n. 2), the prior practice involved only the waiver of "fraud-related administrative procedural defects in the alien's entry." In order for the statute to have any effect, it must be read as forgiving not only the fraud in the application for a visa, but also the entry on the resultant defective visa. But the failure to obtain any visa at all is not this kind of "fraud-related administrative procedural defect"; it is instead a distinct requirement of admissibility which the alien has failed to satisfy. While it may be the cause for the alien's fraud, it is not a necessary result of it.

enters as an immigrant submits himself to the investigations required for the issuance of an immigration visa, and to the supplementary inspection at the port of entry. Records of these investigations are available when a claim of eligibility for waiver under Section 241(f) is subsequently made. They provide the Immigration Service with a substantial basis for determining later, when the waiver is sought, whether the alien was "otherwise admissible at the time of entry" and thus entitled to the waiver.

In contrast, there is no contemporaneous investigation of an alien who enters on a false claim of citizenship; there is unlikely even to be any record of such entry. It would therefore be extremely difficult, if not impossible, to determine whether such an alien was "otherwise admissible at the time of entry." In limiting waiver of deportation to aliens who met that requirement, Congress intended to restrict that privilege to those aliens who sought admission as aliens, and thus whose eligibility for admission had been checked at the time of entry and later could be verified.[10]

[10] In *Lee Fook Chuey* v. *Immigration and Naturalization Service*, 439 F. 2d 244, 248, the Ninth Circuit stated that the statute could be satisfied by an investigation at the time of the assertion of the right to a waiver under Section 241(f), to determine the alien's qualifications at that time. That is, of course, not what the statute requires, since it refers specifically to admissibility at time of entry. Moreover, several of the qualifications depend on the alien's activities and background in his country of departure. An investigation instituted after his fraud is discovered, perhaps many years after his entry, will thus necessarily be less effective than the one required by statute. Accordingly, post-entry determinations of admissibility are authorized only where the Attorney General, in his discretion, grants an application for an adjustment of status under 8 U.S.C. 1255.

Indeed, these considerations suggest that, even under petitioners' interpretation of the statute, the burden of proving that an alien was "otherwise admissible at the time of entry" should be on the alien, since many of the factors showing such eligibility will be within his knowledge.

II

THE LEGISLATIVE HISTORY SHOWS THAT CONGRESS DID NOT INTEND SECTION 241(f) TO BE AVAILABLE TO ALIENS WHO GAINED ADMISSION BY MISREPRESENTING THAT THEY WERE CITIZENS

In *Immigration and Naturalization Service* v. *Errico*, 385 U.S. 214, this Court concluded that the legislative history of Section 241(f) required the conclusion that it applied to those who fraudulently claimed they were entitled to quota preference status. This legislative history, however, does not support the further extension of the section to those who fraudulently avoided the entire alien inspection process. On the contrary, the legislative history indicates that Congress intended only to ameliorate the provisions of the immigration laws to recognize the equities in favor of a specific small group of aliens whose misdoing was minor compared to the penalties imposed. Petitioners are not in this group.

Following the Second World War, Congress promulgated a number of immigration relief measures to aid refugees. Principal among these were the Displaced Persons Act of June 25, 1948, 62 Stat. 1009, and the Refugee Relief Act of August 7, 1953, 67 Stat. 400. Although this legislation resulted in the admis-

sion to the United States of approximately 600,000 refugees, each Act included a restrictive provision which provided that any person who willfully made a misrepresentation for the purpose of gaining admission thereunder "shall thereafter not be admissible into the United States." Section 10, Displaced Persons Act, 62 Stat. 1013; Section 11(a), Refugee Relief Act, 67 Stat. 405. In 1952, in a comprehensive revision and recodification of the immigration and nationality laws, this provision was extended to other aliens. Section 212(a)(19), 8 U.S.C. 1182(a)(19). See S. Rep. No. 1137, 82d Cong., 2d Sess, pp. 10–11.

During the legislative discussions preceding the enactment of the 1952 Act, Congress evidenced concern over the harsh rigidity of these provisions. The House Committee added a proviso to excuse misrepresentation made by refugees in order to avoid persecution, if such representations were not otherwise material to admissibility. H. Rep. No. 1365, 82d Cong., 2d Sess., pp. 50, 134. Although the Conference Committee did not adopt this reservation, it was sympathetic to the objectives and urged immigration authorities to grant special consideration to aliens who had obtained travel documents by fraud or misrepresentation out of fear of forcible repatriation, provided that "such misrepresentation did not have as its basis the desire to evade the quota provisions of the law or an investigation in the place of their former residence." H. Conf. Rep. No. 2096, 82d Cong., 2d Sess., p. 128. The Attorney General nevertheless concluded that the unqualified language of the statute precluded the relief the Conference Committee suggested. See H. Rep. No. 1199, 85th Cong., 1st Sess., p. 10.

In messages to Congress in 1956 to 1957, President Eisenhower recommended, *inter alia,* amendment of the Immigration Act to grant relief to aliens in the country who had obtained visas by misrepresentation in order to escape forcible repatriation behind the Iron Curtain. H. Doc. No. 329, 84th Cong., 2d Sess., p. 5; H. Doc. No. 85, 85th Cong., 1st Sess., p. 5. Acting upon this request, Congress authorized such relief in Section 7 of the Act of September 11, 1957, Pub. L. 85–316, 71 Stat. 640.[11]

Section 7 granted relief to "otherwise admissible" aliens who were excludable either because they procured "visas or other documentation, or entry into

[11] Section 7, as quoted in *Errico, supra,* 385 U.S. at 221, provided in relevant part: "The provisions of section 241 of the Immigration and Nationality Act relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as (1) aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation, or (2) aliens who were not of the nationality specified in their visas, shall not apply to an alien otherwise admissible at the time of entry who (A) is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence; or (B) was admitted to the United States between December 22, 1945, and November 1, 1954, both dates inclusive, and misrepresented his nationality, place of birth, identity, or residence in applying for a visa: *Provided*, That such alien described in clause (B) shall establish to the satisfaction of the Attorney General that the misrepresentation was predicated upon the alien's fear of persecution because of race, religion, or political opinion if repatriated to his former home or residence, and was not committed for the purpose of evading the quota restrictions of the immigration laws or an investigation of the alien at the place of his former home, or residence, or elsewhere. * * *"

the United States by fraud or misrepresentation" or because they were not of the nationality specified in their visas. To obtain relief, such aliens had to meet one of two qualifications: (1) they had to have a specified close relationship to a citizen or a permanent resident alien, or (2) they had to have been admitted between December 22, 1945, and November 1, 1954, made specified misrepresentations on the visa application due to fear of persecution, and had no intent to avoid quota restrictions or investigation.[12]

With some modifications,[13] Section 7 of the 1957 Act was incorporated into the current statute by Sections 15 and 16 of the Act of September 26, 1961, Pub. L. 87–301, 75 Stat. 650, 655.

The waiver of deportability for close relatives was codified as Section 241(f). As this Court pointed out in *Immigration and Naturalization Service* v. *Errico,* 385 U.S. 214, 223, the 1961 Act made no substantive change in the prior law.

The legislative history of Section 7 deals largely with the provisions relating to refugees, and is based on the assumption that those subject to the waiver had been admitted as aliens, not as citizens. It is unlikely that Congress intended, by possibly ambiguous lan-

[12] Thus, all the provisions dealt with aliens seeking entry as aliens. Only the phrase "or entry" could possibly support the extension of the section to those such as petitioners who entered as citizens, and, in context, that interpretation is a strained one.

[13] The provision regarding refugees was omitted from the recodification of Section 7 in 1961, since it had "served its humanitarian purpose." H. Rep. No. 1086, 87th Cong., 1st Sess., p. 37.

guage, to extend the waiver also to those who totally avoided the immigration procedures. Any such far-reaching modification of the basic statutory scheme undoubtedly would have at least been mentioned during consideration of the bill."

Instead, in the Senate debate Senator Eastland represented that the bill "does not touch the basic provisions of the McCarran-Walter Act." 103 Cong. Rec. 15487. In the House of Representatives the leading supporters of the legislation similarly stated that the bill made minor adjustments but "does not change the national origin quota system or rewrite our basic, fundamental immigration and naturalization laws" (Representative Chelf). 103 Cong. Rec. 16305. Moreover, Chairman Celler presented a section-by-section analysis of the bill, which stated with respect to Section 7 (103 Cong. Rec. 16301):

> This section also provides for leniency in the consideration of visa applications made by close relatives of United States citizens and aliens lawfully admitted for permanent residence who in the past may have procured *documentation for entry* by misrepresentation. [Emphasis supplied.]

" Petitioners rely on the comment in the House Report (H. Rep. No. 1199, 85th Cong., 1st Sess., p. 11, that: "[M]isrepresentation [by close relatives] in obtaining documentation or entry would not be a ground or deportation if the aliens were otherwise admissible at the time of entry under the immigration law. The latter category of aliens includes mosty Mexican nationals, *who, during the time when border-control operations suffered from regrettable laxity, were able to enter the United States*, establish a family in this country, and were subsequently found to reside in the United States illegally." [Emphasis supplied.]

But the probable reference in the emphasized language is to laxity at the border in inspecting aliens who present themselves as such, not to the practice of admitting those who claim United States citizenship on their oral affirmation. The latter practice is hardly a temporary and regrettable laxity; it is rather a long-standing, necessary procedure. See *infra*, pp. 23–24.

This Courts' analysis of the legislative history in *Errico* does not help petitioners. There, this Court noted that since Section 7 referred generally to "otherwise admissible" aliens, and then specifically excepted from that category those refugees who sought to avoid quota restrictions, "Congress must have felt that aliens who evaded quota restrictions by fraud would be 'otherwise admissible at the time of entry'." *Errico, supra,* 385 U.S. at 222. There is no such inconsistency in concluding that the waiver does not apply to aliens who have entirely avoided the immigration process.

III

THE STATUTORY SCHEME OF THE IMMIGRATION ACT INDICATES THAT CONGRESS DID NOT INTEND SECTION 241(f) TO BE AVAILABLE TO ALIENS WHO GAINED ADMISSION BY MISREPRESENTING THAT THEY WERE CITIZENS

This Court's decision in *Immigration and Naturalization Service* v. *Errico, supra,* was also based on the conclusion that "[t]he fundamental purposes [of the 1957 Act] was to unite families (385 U.S. at 224). In *Lee Gook Chuey* v. *Immigration and Naturalization Service,* 439 F. 2d 244 (C.A. 9), the court read that statement as indicating that Section 241(f) should be interpreted as a broad judgment that family unity is generally to be preferred to the interest in the inte-

grity of the immigration procedures.[15] We submit that neither *Errico* nor the Immigration and Nationality Act justifies that conclusion.

This Court's essential reasoning in *Errico* dealt solely with the question whether Section 241(f) eliminated quota restrictions as a test of admissibility, and this limited concern is reiterated at several points in the Court's opinion. See 385 U.S. at 215, 220, 222, 223, 224.[16] Mr. Justice Stewart, in his dissent in *Errico,* in which Mr. Justice Harlan and Mr. Justice White joined, expressed concern that the Court's reasoning might justify a far broader reading of Section 241(f) than Congress intended, but he did not suggest that it would lead to so broad a reading as that of the Ninth Circuit, which would forgive the evasion

[15] The integrity of the immigration procedures is important not only to assure that the congressional intent concerning the standards of admission are maintained, but also to assure fair treatment of those aliens seeking admission who comply with the established procedures and do not gain premature entry by fraud. For example, there was, as of January 1, 1974, a waiting list of 1,052 applicants for admission from British Honduras, petitioners' country, from which only 200 immigrants can be admitted annually.

[16] *Errico* does not, for example, indicate that the restrictions in Section 212(a) of the Act, 8 U.S.C. 1182(a), are also waived by Section 241(f). *Bufalino* v. *Immigration and Naturalization Service*, 473 F. 2d 728, 731–732 (C.A. 3), certiorari denied, 412 U.S. 928. Section 212(a) details 31 classes of aliens who shall be ineligible for admission, including, *inter alia*, those who are insane, mentally retarded or physically disabled, drug addicts, prostitutes or paupers, those who have contagious diseases or criminal records, and those likely to become public charges if admitted.

of all visa and alien inspection procedures (*Errico, supra,* 385 U.S. at 227–228).[17]

The 1957 Act, and particularly Section 7, was designed to modify the general Immigration Act provisions to a limited extent when the interests in family unity justified that modification. But although one of the purposes of the 1957 Act was to promote family unity, Section 7 did not enunciate any broad conclusion that family unity is to be the overriding concern in the interpretation of the Immigration Act. Indeed, the basic statutory scheme indicates otherwise.

The general scheme of the Act shows that, while Congress recognized the desirability of maintaining family unity, it did not subordinate all other important policies to that interest. In general, relationship to a lawful resident is only one factor to be considered in determining whether to grant discretionary relief from deportation. See *Hintopoulos* v. *Shaughnessy,* 353 U.S. 72, 77.[18]

[17] Mr. Justice Stewart also suggested that the reasoning of the majority indicated that Section 241(f) does not forgive any lies about nationality. *Id.*, 229–230, n. 6. Under that analysis, petitioners' lies concerning their nationality would not be waived.

[18] For example, Section 244 of the Act (8 U.S.C. 1254) authorizes suspension (and ultimately waiver) of deportation for aliens with extended residence in this country if deportation would result in extreme or unusual hardship to the alien or close relatives in the United States. Although most grounds for deportation can be waived under this section, its benefits are available only to those who meet prescribed standards of residence, good moral character and hardship (8 U.S.C. 1254 (a)); Relief is not available, moreover, for specific categories of aliens such as crewmen, exchange visitors and natives of nearby coun-

Section 241(f) is an exception to this general scheme, since the factor of relationship is enough, by itself, to entitle an "otherwise admissible" alien to an automatic waiver of deportability. Moreover, this unusually generous benefit is conferred only on those who obtained admission by fraud, who are thus favored over those who have the same family relationship to citizens but have not committed fraud.[19] The emphasis in the rest of the Act on consideration of all the equities, including not only family relationships[20] but also other factors relating to admissibility, indicates that Congress, by limiting Section 241(f) relief to "otherwise admissible" aliens, intended to restrict it narrowly—at least, to those aliens who admit their alienage on entry.

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tries (see 8 U.S.C. 1254(f)). In any case, the statute provides that suspension of deportation can be granted only in the discretion of the Attorney General and that any such grants must be submitted to Congress for its approval (8 U.S.C. 1254(c)). Similar conditions substantially limit other waivers of deportability authorized by Congress for aliens with close relatives or long residence in the United States. *E.g.*, 8 U.S.C. 1259 (see *Mercica* v. *Esperdy*, 376 U.S. 560); 8 U.S.C. 1182(e); 8 U.S.C. 1182(h).

[19] Petitioners' parenthood of minor U.S. citizens would not of itself enable them either to obtain preference in admission or, once within the country, to obtain lawful resident status. 8 U.S.C. 1151(b). See *Hintopoulos* v. *Shaughnessy*, *supra*; *Aalund* v. *Marshall*, 461 F. 2d 710, 714 (C.A. 5); *Faustino* v. *Immigration and Naturalization Service*, 432 F. 2d 429 (C.A. 2), certiorari denied, 401 U.S. 921; *Perdido* v. *Immigration and Naturalization Service*, 420 F. 2d 1179 (C.A. 5).

[20] Although wives and children of citizens are entitled to preferences in admission as immigrants, not all marriages are recognized for that purpose (see 8 U.S.C. 1101(a)(35)), and the term "child" is narrowly defined (see 8 U.S.C. 1101(b)).

Petitioners' claims are particularly inconsistent with Congress' actions in relation to adjustment of status under Section 245 of the Act (8 U.S.C. 1255). This procedure is often invoked to avert the deportation of aliens who are in the United States in temporary or unlawful status, who have married and established families in this country, and who wish to attain permanent residence without leaving the United States. The statute specifies that adjustment is available only to an "alien, other than an alien crewman, who was inspected and admitted or paroled into the United States". Thus, this statutory dispensation is limited to aliens who have already gone through some regular alien admission process. Moreover, an alien applying for adjustment of status under Section 245 is legally in a position analogous to that of an alien seeking to enter the United States for permanent residence and must be eligible to receive an immigration visa and be admissible for permanent residence under all provisions of the immigration laws. See *Campos* v. *Immigration and Naturalization Service*, 402 F. 2d 758, 760 (C.A. 9); *Talanoa* v. *Immigration and Naturalization Service*, 397 F. 2d 196, 199–200 (C.A. 9).

It is improbable that Congress intended that an alien who fraudulently claimed to be a United States citizen, and thus was able to enter the United States without any visa or inspection, is entitled to greater benefits than an alien who becomes eligible for adjustment of status under Section 245 only if he has submitted himself to the administrative process for entry as an alien.

IV

APPLICATION OF THE WAIVER PROVISIONS OF SECTION 241 (f) TO ALIENS WHO GAINED ADMISSION BY CLAIMING CITIZENSHIP WOULD SUBSTANTIALLY ERODE THE SYSTEM OF VISA ISSUANCE AND NUMERICAL RESTRICTIONS CAREFULLY DEVELOPED BY CONGRESS IN ORDER TO CONTROL ENTRIES INTO THE UNITED STATES

As we have noted previously, all aliens who admit their alienage at the border must provide documentary evidence of their right to enter this country,[21] and submit to a detailed inspection by the Immigration and Naturalization Service to assure that they are admissible. Because of the large numbers of persons making such border entries, as a practical matter it is impossible to conduct more than a cursory investigation of claims of United States citizenship made at points of entry across our land borders. 1 Gordon and Rosenfield, *Immigration Law and Procedure,* Section 3.2, 3.16b (1974 rev. ed.).

It is thus comparatively simple for aliens to gain entrance on false claims of citizenship. *Goon Mee Heung* v. *Immigration and Naturalization Service,* 380 F. 2d 236, 237 (C.A. 1), certiorari denied, 389 U.S. 975. If they can then attain the right to remain simply by acquiring a citizen spouse or child, the statutory immigration controls will be substantially eroded.

[21] See note 7, *supra;* 8 U.S.C. 1181(a). An immigrant may obtain such a document only after an investigation by American officials in his country of origin to assure that he meets the statutory requirements for admissibility. 8 U.S.C. 1201; 22 C.F.R. Part 42.

Petitioners' reading of Section 241(f) would result in serious evasion of the Immigration and Nationality Act and place a premium on fraud and wrongdoing. During fiscal year 1973, more than 235 million persons passed through ports of entry along the Canadian and Mexican borders. Of that number, 99,910,295 entered the United States under a claim of United States citizenship; the vast majority of such claims were based upon oral affirmation. 1973 Annual Report, Immigration and Naturaliztion Service, p. 27. 1 Gordon and Rosenfield, *Immigration Law and Procedure,* pp. 3–75, 3–97 (1974 rev. ed.). The problem created by fraudulent claims of United States citizenship is a matter of constant concern to the Immigration Service, since many aliens take advantage, as did petitioners, of the necessary informality to obtain entry into the United States through falsely representing themselves as citizents of the United States. By limiting the ability of the Immigration Service to deport such aliens once they have gained admission, and thus increasing the incentive to engage in such fraud, petitioners' interpretation of Section 241(f) would produce an especially grave enforcement problem on the Mexican border, where there are hundreds of thousands of illegal entries each year.[22]

Many thousands of these illegal entrants come into this country surreptitiously, and (as petitioners recognize) Section 241(f) does not benefit this category of

[22] In recent years there has been a steep rise in illegal entries from Mexico. During fiscal year 1973, the Service located 576,823 illegal entrants, an increase of 34 percent over the preceding year. 1973 Annual Report, *supra,* at pp. 8–9.

alien. See *Monarrez-Monarrez* v. *Immigration and Naturalization Service*, 472 F. 2d 119 (C.A. 9). As a practical matter, however, it is difficult, if not impossible, to refute a surreptious entrant's claim that he had entered through a port of entry on a false claim of citizenship. Unless there is some reason for suspicion by immigration officers, no record is made of persons entering this country at ports of entry along our land borders under a claim of citizenship.[23] Indeed, given the fact that nearly 100 million persons enter on such a claim annually, useful record keeping would be impossible without very seriously interfering with legitimate border traffic.

CONCLUSION

It is therefore respectfully submitted that the judgment of the court of appeals should be affirmed.

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[23] Due to the more limited number of persons who arrive by sea or air, documentary evidence is required for such entry. See 1 Gordon and Rosenfield, *supra*, section 3.2. During fiscal 1973, approximately 10 million persons entered this country through sea or air ports under claims of citizenship. 1973 Annual Report, *supra*, at p. 27.

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Petitioners,

vs.

IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1973

No. 73-1541

ROBERT REID and NADIA ALICE REID,
Petitioners,

vs.

IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Second Circuit

REPLY BRIEF OF DANIEL PEREZ ECHEVERRIA AMICUS CURIAE FOR PETITIONERS

SUMMARY OF ARGUMENT

Amicus Curiae contend, as the Court held in *Immigration and Naturalization Service v. Errico*, 385 U.S. 214 (1966), that the overriding intent of Congress when it enacted §241(f) was to reunite families composed in part of U. S. citizens or aliens lawfully admitted for permanent residence. Congress was therefore willing to forgive a minor fraud such as a false claim to citizenship in the interest of promoting

"family unity." Strict application of the other ameliorative provisions of the Immigration and Nationality Act would deny relief from deportation to aliens who would be otherwise eligible for §241(f) relief. Given the overridding intent of Congress to promote family unity, it is inconceivable that Congress could have intended such a harsh result to follow. Therefore, it is submitted that Congress intended §241(f) to supplement the other ameliorative provisions of the Act, so as to provide relief in instances where it would otherwise be denied because of the strict application of the other ameliorative provisions of the Act.

In addition, Amicus Curiae contend that the fraud in procuring "entry" by falsely claiming United States citizenship is directly analogous to the fraud practiced by the Respondents in *Errico, supra*. In *Errico*, the Court held that the overriding humanitarian interest in promoting family unity saved an alien from deportation despite the fact that he entered the United States through a fraudulently obtained immigrant visa, provided that he was "otherwise admissible" at the time of entry. The Court implied that the administrative laxity which prevented Errico's fraud from being discovered until after he had established a family in the United States should not work a forfeiture of the rights of his family composed in part of United States citizens.

A central point in Petitioner's claim in *Errico* was that he submitted himself to inspection by the Immigration officers and afforded them an opportunity to discover his fraud. In this respect, an entry through

a false claim to citizenship is no different from an entry via a fraudulently obtained immigrant visa.

Section 241(f) applies in the case of an alien who procures a "visa, or other documentation *or entry*" [emphasis added] by fraud or misrepresentation. While the literal language of §241(f) could be construed to require the application of §241(f) to *all* forms of illegal entry, it is reasonable to conclude that Congress intended §241(f) to apply only in cases where the aliens afforded the Immigration authorities a chance to inspect and exclude them. In keeping with the Court's decision in *Errico* and the legislative intent of §241(f) we submit that the case of an alien who falsely claims United States citizenship during an inspection at a Port of Entry is a logical stopping place for the application of §241(f).

ARGUMENT

I

SECTION 241(f) WAS INTENDED TO SUPPLEMENT THE OTHER AMELIORATIVE PROVISIONS OF THE IMMIGRATION AND NATIONALITY ACT, AND IS THUS IN CONCERT WITH THE OVERALL STATUTORY SCHEME OF THE ACT.

The Service raises the specious argument that promoting "family unity" was not the overriding factor which prompted Congress to enact §241(f). This argument flies in the face of the express Legislative history of §241(f) and the unequivocal language in *Immigration and Naturalization Service v. Errico*, 385 U.S. 214 (1966). The Service argues that this

policy of promoting family unity, regardless of its desirability must necessarily be subordinated to the interests of maintaining the integrity of the Immigration procedures.[1] Further, the Service argues that to grant an automatic waiver of deportation charges to an alien who enters through a false claim to citizenship conflicts with the other ameliorative provisions of the Immigration and Nationality Act.[2] Accordingly, Congress could not have intended that an alien who entered through a false claim to citizenship should take greater benefits than one who submitted himself for inspection and subjected himself to the discretion of the Attorney General.

The Service's argument conflicts with this Court's opinion in *Errico, supra.* In addition, it overlooks the fact that §241(f) by its very nature contemplates inspection, albeit retroactive, in order for the alien to establish that he was "otherwise admissible" at the time of entry. The term "otherwise admissible" refers to inadmissibility on generally applicable mental, moral and physical grounds. See *Immigration and Naturalization Service v. Errico,* 385 U.S. 214 (1966). These "qualitative" grounds of excludability are by their very nature not easily extinguishable by time; they are readily documented, as in the case of a conviction for a crime involving "moral turpitude." See 8 U.S.C. §1182(a) (9). A retroactive inspection as is

[1]Respondent's brief pp. 17-22.

[2]§244 of the Immigration and Nationality Act, 8 U.S.C. §1254, "Suspension of Deportation" and §245 of the Act, 8 U.S.C. §1255, "Adjustment of Status."

required in a §241(f) case is functionally no different from that required in a §245 case.[3]

Moreover, the Service's argument displays a misunderstanding of the role §241(f) plays in the statutory scheme of the Immigration and Nationality Act. The forerunner to §241(f), §7 of the 1957 Act, identified the primary beneficiaries of the provision as ". . . mostly Mexican Nationals. . . . H.R. Rep. No. 1199, 85th Cong., 1st Sess. p. 11, U.S. Cong. & Admin. News 1957, p. 2924. The Legislative history indicates that §241(f) was not intended to change the substance or intent of §7. *Errico, supra,* at 223. Another ameliorative provision of that Act, §245, specifically precludes relief to Natives of the Western Hemisphere, and the islands adjacent thereto. Similarly, §244 precludes relief to any native of any country contiguous to the United States unless the alien can establish that he is ineligible to receive a "special immigrant visa."[4] Therefore, Congress intended §241

[3]The other grounds of excludability are contained in 8 U.S.C. §1182(a)(1)-(31). Note that since §241(f) by its terms requires the alien to establish that he was "otherwise admissible" at the time of entry, the burden is necessarily on him to provide the requisite documentation.

[4]Section 244 of the Act provides that the Attorney General in his discretion can suspend the deportation of an alien who "has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application, and proves that during all such period he was and is a person of good moral character; and is a person whose deportation, in the opinion of the Attorney General would result in extreme hardship to the alien, his spouse, parent or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence . . .

(f) No provision of this section shall be applicable to an alien who . . . (3) is a native of any country contiguous to the United States, or any island named in §101(b)(5): *Provided* that the

(f) to supplement the other ameliorative provisions of the Immigration and Nationality Act so as to provide relief from deportation in cases where it would normally be denied because the alien was born in the wrong Hemisphere or because he committed a minor "fraud or misrepresentation" in obtaining entry.[5]

II

THE APPLICATION OF THE WAIVER PROVISIONS OF §241(f) TO ALIENS WHO GAINED ENTRY BY CLAIMING CITIZENSHIP IS CONSISTENT WITH THE EXPLICIT LANGUAGE OF THE STATUTE AND THE CONGRESSIONAL INTENT.

Implicit in the Service's brief and in its contentions throughout this proceeding is the argument that a ruling that applies §241(f) to the Reids will inevitably apply to all forms of illegal entry into the

Attorney General may in his discretion agree to the granting of Suspension of Deportation to any alien specified in clause (3) of this subsection if such alien establishes to the satisfaction of the Attorney General that he is ineligible to receive Special Immigrant visa."

Section 245 of the Act provides that "The status of an alien . . . who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is approved . . . . (c) The provisions of this section shall not be applicable to any alien who is a native of any Country of the Western Hemisphere, or of any adjacent island named in §101(b)(5)."

[5]Since both provisions require the discretion of the Attorney General and §244 requires that the alien be a person of "good moral character," even a minor fraud or misrepresentation such as a false claim of citizenship, would preclude relief under these provisions. *Orlando v. Robinson*, 262 F.2d 850 (C.A. 7, 1959); *Arakas v. Zimmerman*, 200 F.2d 322 (C.A.2, 1952).

United States. The Service's argument infers that such a ruling overrules *Monarrez-Monarrez v. Immigration and Naturalization Service*, 472 F.2d 119 (C.A.9, 1972), thereby "opening up the floodgates" to illegal alien traffic into the United States. This argument ignores the explicit language of the statute, the express legislative history of §241(f) and the major substantive differences among the types of illegal entry into the United States which can arise in a §241(f) context.

The reported cases to date have dealt with four functionally different types of entry.

First, there is the case of an entry by an alien who has submitted himself to the immigrant visa screening procedures, actually obtained a visa, albeit by fraud and entered the United States on the basis of that visa. This was the factual situation in *Immigration and Naturalization Service v. Errico*, 385 U.S. 214 (1966). §241(f) is clearly applicable to this type of case. *Godoy v. Rosenberg*, 415 F.2d 1266 (C.A. 9, 1969).

Secondly, there are the extreme instances, involving totally surreptitious entry (the so-called "wet-back" or "stowaway" cases). These cases involve aliens who enter the United States by stealth through our contiguous land borders, or escape detection from Immigration Officers at Ports of Entry. While this Court has never faced the question of the applicability of §241(f) to an alien who enters surreptitiously, two circuits have held §241(f) inapplicable to aliens seeking relief from deportation on the basis of

such entry. See *Monarrez-Monarrez v. Immigration and Naturalization Service, supra* (surreptitious entry by concealment in the trunk of a car); *Gambino v. Immigration and Naturalization Service,* 119 F.2d 1355 (C.A.2, 1972), cert. denied, 399 U.S. 905 (entry as a stowaway).[6]

A third major category of §241(f) cases involve aliens who originally entered the United States based upon a temporary non-immigrant visa, overstayed, and then sought to invoke §241(f) as a defense to deportation by alleging that they had the requisite fraudulent intent to overstay at the time of their initial entry. The appellate case law on this type of §241(f) case has been inconsistent. For instance, the Ninth Circuit in *Muslemi v. Immigration and Naturalization Service,* 408 F.2d 1196 (C.A.9, 1969) held that §241(f) was applicable to the "overstay"

[6]In *Monarrez-Monarrez, supra,* the Court refused to hold §241(f) applicable to an alien who entered surreptitiously in the trunk of a car in that such a totally surreptitious entry did not constitute "fraud or misrepresentation" within the purview of §241(f). At the same time, the *Gambino* case can be distinguished from *all* other §241(f) cases since 8 U.S.C. §1182(a)(18) sets up an entirely separate ground for exclusion for "aliens who are stowaways". In fact, the Court in *Gambino* distinguished *Errico, supra* on that very ground and held §241(f) inapplicable, reasoning that *Errico* applied only to aliens excludable at the time of entry under 8 U.S.C. §1182(a)(19)(20) or (21) and not to aliens excludable under 8 U.S.C. §1182(a)(18).

Without delving into the Court's reasoning in *Monarrez and Gambino* those cases cannot govern the instant case. In neither of those cases did the alien confront an Immigration officer for inspection. In *Reid,* as in *Echeverria,* Petition for Cert. presently pending before this Court, No. 73-1917, the aliens put the Immigration officer on notice that they were coming to the United States to reside permanently, else they would not have claimed United States citizenship. The officer was thus afforded an opportunity to exercise his right to investigate and inevitably exclude them as aliens pursuant to 8 C.F.R. §235.1(b), 8 U.S.C. §1225.

situation. In 1971 this position was reaffirmed by the court in *Vitales v. Immigration and Naturalization Service,* 443 F.2d 343 (C.A.9, 1971). However, the United States Supreme Court meanwhile granted certiorari in *Vitales,* and the original *Vitales* decision was vacated as moot when the alien left the country. *Immigration and Naturalization Service v. Vitales,* 405 U.S. 983 (1972).

Later, however the Ninth Circuit rejected its previous ruling in *Vitales* and held §241(f) inapplicable in the "overstay" cases. *Cabuco-Flores v. Immigration and Naturalization Service,* 477 F.2d 108 (C.A.9, 1973), cert. denied, 414 U.S. 841. In *Cabuco-Flores, supra,* the Court purported to reaffirm its holding in *Muslemi, supra,* but then proceeded to distinguish the facts in *Muslemi,* from the facts before it. Thus, the clear result of *Cabuco-Flores* is to refuse §241(f) relief to all aliens who enter with a temporary visa and then overstay.[7]

[7]The Court in *Cabuco-Flores* sought to distinguish *Muslemi,* reasoning that deportation charges were brought against Muslemi one day prior to the expiration of his temporary visa, on the ground that he was excludable at the time of entry in that he entered as an "immigrant," i.e., with the intention of remaining permanently, and that he did not then possess a valid immigrant visa. 8 U.S.C. §1251(a)(1). In *Cabuco-Flores,* on the other hand, the alien was deportable for having overstayed the time permitted on his temporary non-immigrant visa. *Cabuco-Flores, supra* at 110-111. The Court reasoned that in *Muslemi* the Government was required to prove that Muslemi entered with the intent to remain permanently in order to establish that he was excludable for entering as an "immigrant" without a valid immigrant visa. 8 U.S.C. §1251(a)(1), 8 U.S.C. §1182(a)(20). The "fraud" was therefore "germane" to the deportation charge.

In contrast, the Government in *Cabuco-Flores* was only required to prove that the alien had overstayed. For obvious reasons *Cabuco-Flores* effectively negates the benefit an alien would

Finally, there are the *Reid* and *Echeverria* situations of aliens who enter by falsely claiming United States citizenship to an Immigration officer during an inspection at a Port of Entry. Of the cases which have considered §241(f) in this context, only the divided opinion in *Reid* has agreed with the Service's contentions that §241(f) should not be applicable. At least five other Federal appellate decisions have expressly held the contrary and found that §241(f) was applicable. *Lee Fook Chuey v. Immigration and Naturalization Service*, 439 F.2d 244 (C.A.9, 1971); *Echeverria v. Immigration and Naturalization Service* (Opinion unpublished) C.A.9, Feb. 27, 1974, (Petition for Cert. presently pending before this Court, No. 73-1917); *Gonzalez de Moreno v. United States Immigration and Naturalization Service*, 492 F.2d 532 (C.A.5, 1974); *Gonzalez v. Immigration and Naturalization Service*, 493 F.2d 461 (C.A.5, 1974); *United States v. Osuna-Picos* 443 F.2d 907 (C.A.9, 1971).

The Service implicitly argues that these "false claim to citizenship" cases must inevitably be lumped with the "surreptitious entry cases and the "overstay" cases, and that a ruling in favor of the Reids will open a Pandora's box to the necesssary application of §241(f) to all forms of illegal entry. We submit that this is not so.

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derive from the *Muslemi* opinion. The Service need only be careful to bring deportation proceedings under 8 U.S.C. §1252(a)(2), rather than 8 U.S.C. §1251(a)(1) in order to avoid the application of §241(f).

It is important to note that the Court in *Cabuco-Flores* affirmed the ongoing validity of *Lee Fook Chuey v. Immigration and Naturalization Service*, 439 F.2d 244 (C.A.9, 1971) a case virtually identical to *Reid* and *Echeverria*.

While the term "entry" as defined in the Act, 8 U.S.C. §1101(a)(13), could conceivably apply to any of the above three types of cases, a reasonable distinction among the three categories of cases can be drawn on the basis of the express legislative history of §241(f).

The House Committee Report that accompanied §241(f) when it was originally adopted as part of the 1957 Amendments to the Immigration and Nationality Act explicitly stated that the primary purpose in adopting §241(f) was to grant relief from deportation to:

> ". . . mostly Mexican Nationals who, during the time when *border-control operations* suffered from *regrettable laxity* were able to enter the United States [and] establish a family in this country. . . ." H.R. Rep. No. 1199, 85th Cong., 1st Sess., U.S. Cong. and Admin. News 1957, p. 2024 (emphasis added).

In view of this language, it is logical that Congress was referring to entries through a *Port of Entry* when it referred to "border control operations." Otherwise the effect of the statute would be to impose an admittedly overwhelming burden on the Service to patrol literally every mile of our five thousand miles of contiguous land borders with Canada and Mexico at the risk of being unable to deport an alien if one slipped across the border.

In addition, the statute logically refers only to those entries through a Port of Entry where the Service is reasonably put on notice that the applicant is

potentially coming into the United States *for permanent residence.*[8]

Accordingly, the so-called "wet-back" cases do not fall within the purview of §241(f) because the entry did not take place through a Port of Entry; the "overstay" cases similarly fall outside the purview of §241(f) in that the Service is not put on notice at the time of original entry that the alien is potentially entering with the intention to remain permanently. These situations contrast with the instance of an alien entry based on a false claim to citizenship made to an Immigration officer at a Port of Entry. An entry based on a false claim to citizenship is no different from an entry with a fraudulently obtained visa. Thus, the unequivocal language of §241(f) and its Legislative history militate in favor of holding §241(f) applicable to the Reids.

[8]The Government contends (Respondent's Brief, p. 7, fn.6, p. 20) that §241(f) should be held to apply only to aliens who put the Service on notice that they are entering as aliens. They cite the instance of an alien who enters, possessing a temporary nonimmigrant visa who fraudulently conceals his intention to remain permanently. As the argument goes, since Courts have held §241(f) inapplicable to aliens who commit fraud, but at least admit their alienage and submit themselves for inspection, surely it should be inapplicable to those who conceal their alienage. The argument ignores the fact that cases of this type have generally been treated as "overstay" cases (see fn.6, *supra*) and are distinguishable from the present case. The rationale for holding §241(f) inapplicable is the fear that there is no way for the Government to ascertain at the time of entry whether the alien seeks to remain permanently, which would trigger more extensive investigatory procedures, and that it is impossible at a deportation hearing for the Government to disprove that the alien entered with the preconceived intent to remain permanently. In the case of an alien claiming to be a United States citizen, the Immigration officer is put on notice that he is coming into the United States to reside permanently. The Immigration officer is afforded the opportunity to further investigate the individual as though he were an alien if he so chooses. At a deportation hearing, the alien bears the burden of establishing all the requisite elements for §241(f) relief. The Service bears no more burden as to proof than it would have in any other proceeding.

As discussed in Section III (pages 12-16) of our opening Brief of Amicus Curiae, the Service has plenary power under the Act, see 8 C.F.R. §235.1(b) to summarily reject dubious claims of citizenship and to exclude applicants as aliens pending an exclusionary hearing pursuant to the Act. See 8 U.S.C. §1225. If the Service does not exercise its power in a situation *where it has been reasonably put on notice* that the applicant may be coming into the United States to reside permanently, its laxity in failing to adequately investigate the claim of citizenship (for whatever valid reasons related to foreign policy, domestic farm economy, or otherwise) is clearly the very *administrative laxity of enforcement* which prompted Congress to enact §241(f) in the first place.

CONCLUSION

For the reasons stated, and those in our opening brief, the opinion below should be reversed, and the *Echeverria* opinion summarily affirmed.

Respectfully submitted,

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BRIEF OF DANIEL PEREZ ECHEVERRIA AMICUS CURIAE FOR PETITIONERS

QUESTIONS PRESENTED

Whether aliens who were admitted to the United States based on a false claim citizenship made to an immigration officer at a port of entry at the Mexican border are entitled to relief from deportation under 8 U.S.C. §1251(f), where they are the parents of two minor United States Citizen children.

STATUTE INVOLVED

Section 241(f) of the Immigration and Nationality Act, 8 U.S.C. §1251(f) provides as follows:

> The provisions of this section relating to the deportation of aliens within the United States on the ground that they were excludable at the time of entry as aliens who have sought to procure, or have procured visas or other documentation, or entry into the United States by fraud or misrepresentation shall not apply to an alien otherwise admissible at the time of entry who is the spouse, parent, or a child of a United States citizen or of an alien lawfully admitted for permanent residence.

INTEREST OF AMICUS CURIAE

Daniel Perez Echeverria is the respondent in the matter of *Immigration and Naturalization Service v. Daniel Perez Echeverria*, (Docket No. 73-1917) in which a petition for certiorari is presently pending before this Court. The issues presented in that case are virtually identical to those here and resolution of this case will inevitably resolve the *Echeverria* matter as well. In addition, Mr. Echeverria has a special interest in the deposition of this case. Mr. Echeverria is a Mexican laborer, who like the Reids, obtained entry to the United States by a false claim of citizenship at the Mexican border. However, as a Mexican national, Mr. Echeverria has a unique position in relation to this litigation since Mexican Nationals were the express intended beneficiaries of 8 U.S.C. §1251(f) when that section was originally adopted by Congress in 1957. Accordingly, Mr. Echeverria's position would not be adequately represented by petitioners.

All parties have consented to the filing of an *amicus curiae* brief by Mr. Echeverria.

SUMMARY OF ARGUMENT

Simply stated, the majority decision below is a surrender to statistical, legislative policy arguments which, in addition to being specious in most instances, are irrelevant in a court of law.

8 U.S.C. §1251(f) ("§241(f)" hereinafter) was adopted by Congress in 1957 for the specific humanitarian purpose of keeping families together and avoiding the human suffering and hardship which naturally would flow from forced deportation of a father or other immediate member of a United States family. It was originally enacted as §7 of the Immigration and Nationality Act Amendments of 1957, Pub.L.. 85-316, 71 Stat. 639 (1957), and its substantive provisions have remained unchanged since that time. *Immigration and Naturalization Service v. Errico,* 385 U.S. 214, 223 (1966).

Section 241(f) was adopted by Congress because of an express concern for a large number of primarily[1] Mexican aliens who have been tacitly encouraged to enter the United States over the years

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[1]While Mexican Nationals were the principal reason for the adoption of §241(f), its provisions are not limited to them. *Errico, supra,* 385 U.S. 214. 224.

because of laxity of administrative enforcement at the Mexican border. H.R. Rep. No. 1199, 85th Cong., 1st Sess., p. 11, U.S. Code Cong. & Admin. News, 1957, p. 2024. *Errico, supra,* 385 U.S. 214, 224-225.

In *Errico,* the only previous decision of this Court interpreting §241(f), the Court was faced with the question of whether aliens from quota countries, who had made false representations regarding their marital or labor skill status in order to avoid quota restrictions, were also eligible for relief from deportation under §241(f). The Immigration and Naturalization Service ("Service" hereinafter) argued that since §241(f) was in obvious conflict with screening procedures set up elsewhere in the Immigration laws, it should be strictly construed against aliens. The Service urged, therefore, that the phrase "otherwise admissible" should be construed to deny relief to aliens who were "quantitatively" inadmissible at the time of their entry because the quota for their country of origin was oversubscribed.

Errico met this argument squarely and summarily rejected it. After an extensive review of the language and legislative history of §241(f), and its obvious conflict with screening provisions contained elsewhere in the Act, the Court dispositively concluded that the humanitarian purpose of the statute was dominant, that any ambiguous language or conflict should be resolved in favor of the alien, and that "otherwise admissible" should therefore be construed to refer only to generally applicable moral, mental or physical disabilities and not to mere "quantitative"

inadmissibility at the time of entry. *Errico, supra,* 335 U.S. 214, 225.

The instant case raises the question whether §241(f) also applies to an alien who obtained entry to this country by a false claim of citizenship made to an Immigration officer at a port of entry on the Mexican border; or whether, as the Service contends, §241(f) should be limited to aliens who have actually obtained a visa from a U.S. consulate and entered on the basis of that visa, as in *Errico.*

This is a question of first impression in this Court; but of *five* separate federal appellate decisions which have considered the same question, only the Second Circuit in the divided opinion below has agreed with the Service. (For decisions holding that §241(f) *is* applicable to entries by a false claim of citizenship, see *Lee Fook Chuey v. Immigration and Naturalization Service,* 439 F.2d 244 (C.A.9, 1971); *Echeverria v. Immigration and Naturalization Service* (Opinion unpublished) C.A.9, Feb. 27, 1974, (Petition for Cert. presently pending before this Court, No. 73-1917); *Gonzalez de Moreno v. United States Immigration and Naturalization Service,* 492 F.2d 532 (C.A.5, 1974); *Gonzalez v. Immigration and Naturalization Service,* 493 F.2d 461 (C.A.5, 1974).

The majority opinion below, while admitting that a literal interpretation of §241(f) would apply to an entry by a false claim of citizenship at a port of entry,[2] refused to apply this literal meaning because

[2] *Reid v. Immigration and Naturalization Service,* 492 F.2d 251, 253 (C.A.2, 1974).

of what it perceives to be the Congressional intent in adopting §241(f).

The opinion is not clear as to which word, clause or phrase the Court is in fact construing in denying §241(f) relief to the Reids. But in essence the Court argues that it is justified in amending the statute because:

(1) A literal reading of the statute would conflict with the visa applicant screening procedures set up elsewhere in Federal immigration law;

(2) It will be more difficult to retroactively determine whether an alien seeking §241(f) relief was "otherwise admissible" at the time of entry where that alien has not originally submitted himself to visa applicant screening procedures; and

(3) The logistics of our contiguous land border with Mexico make it impossible to adequately inspect an alien seeking entry on a false claim of citizenship.[3]

[3]The opinion actually makes one additional argument worthy of at least brief mention: That §241(f) should not be literally construed since there is alternative relief available to the Reids under other sections of immigration law. *Reid, supra*, 492 F.2d 251, 258. The general tone of the *Reid* opinion indicates that this argument is a justification for the result, rather than the reason for it, but in any event it is quickly and simply answered.

With regard to alleged alternative relief, the Court below cites 8 U.S.C. §§1182(e) and (h) and 8 U.S.C. §1254. Of these sections, the first two have no relevance whatever. 8 U.S.C. §1182(e) relates only to discretionary relief available to aliens here on student visas pursuant to 8 U.S.C. §1101(a)(15)(J). And 8 U.S.C. §1182(h) relates only to discretionary relief from *exclusion* (not deportation) for aliens *outside* the United States with family *inside*. This latter was a companion provision adopted along with §241(f) in §7 of the 1957 Amendments and can hardly be argued to be a substitute for it. Finally, suspension of deportation under 8 U.S.C. §1254 is limited to aliens who: (1) have seven years continuous residence in the United States; and (2) are of "good moral character." Neither of the Reids have been here seven years; and in any event the cases construing §1254 have held that a false statement to an Immigration official negates a finding of "good moral character." *Orlando v. Robinson*, 262 F.2d 850 (C.A.7, 1959); *Arakas v. Zimmerman*, 200 F.2d 322 (C.A.2, 1952). So the very fraud which triggers §241(f) in the first place would make §1254 relief unavailable.

We disagree in every respect. We submit that the meaning of §241(f) is explicit on its face and not susceptible of the interpretation given by the Court below. Secondly, the Congressional history, to the extent it is relevant, supports, rather than contradicts, a literal and humanitarian application of the statute. Third, far from being a justification for judicial amendment of §241(f) the Mexican border was the primary reason §241(f) was adopted in the first place.

In short, the language and legislative history of the statute are clear and unequivocal and the proper forum for the Service's arguments, if any, is in Congress.

ARGUMENT

I

THE APPLICABILITY OF §241(f) TO AN ENTRY BY A FALSE CLAIM OF CITIZENSHIP IS CLEAR AND EXPLICIT ON THE FACE OF THE STATUTE. ACCORDINGLY, JUDICIAL CONSTRUCTION OF THE STATUTE IS INAPPROPRIATE REGARDLESS OF ALLEGED CONGRESSIONAL INTENT.

By its express terms, §241(f) grants relief from deportation to "otherwise admissible"[4] aliens with close family ties in the United States,

[4]Since this Court's 1966 decision in *Errico, supra*, 385 U.S. 214 it has been settled that "otherwise admissible" within the meaning of §241(f) refers only to generally applicable "qualitative" inadmissibility at the time of entry. *Id.* 385 U.S. 214, 225;

". . . who have sought to procure, *or* have procured visas *or* other documentation, *or entry* into the United States by fraud or misrepresentation . . ." (emphasis supplied).

There is no "family ties" issue here; nor is there any evidence or contention that either Mr. or Mrs. Reid were "qualitatively" inadmissible at the time of their entry. *Reid, supra,* 492 U.S. 251, 260. The only issue therefore is whether an entry procured by a false claim of citizenship to an immigration officer at a port of entry is an "entry"[5] within the meaning of §241(f). Clearly, it is.

The statute does not say "entry by an alien inspected as an alien" as implied by the majority opinion below.[6] Nor is it limited to aliens who obtain *both* a visa *and* entry. Its language is disjunctive not conjunctive; so the effect of the opinion below is an impermissible judicial amendment which effectively excised from the statute the words "or other documentation or entry."[7] *Reid, supra,* 492 F.2d 251, 262

Godoy v. Rosenberg, 415 F.2d 1266, 1270-1271 (C.A.9, 1969); *Lee Fook Chuey, supra,* 439 F.2d 244, 246 (C.A.9, 1971); *Gonzalez de Moreno, supra,* 492 F.2d 532, 538 (C.A.5, 1974).

[5]"Entry" within the meaning of the Immigration and Nationality Act is defined by 8 U.S.C. §1101(a)(13) as being *"any coming"* of an alien into the United States from a foreign port or place or from an outlying possession, whether voluntary or otherwise, . . ." (emphasis supplied)

[6]*Reid, supra,* 492 F.2d, 251, 259-260.

[7]It is a settled maxim of statutory construction that where the language of a statute is clear and unambiguous, the words of the statute are controlling regardless of any alleged legislative intent to the contrary. *Reid, supra,* 492 F.2d 251, 262 (dissenting opinion of Judge Mulligan); *Wisconsin R.R. Comm'n v. Chicago, B. & Q. R.R.,* 257 U.S. 563, 589 (1922); *Holtzman v. Schlesinger,* 484 F.2d 1307, 1314 (C.A.2, 1973). Nor is this

(dissenting opinion of Judge Mulligan); *Gonzales de Moreno, supra,* 492 F.2d 532, 536-537.

II

THE OVERRIDING INTENT OF CONGRESS IN ENACTING §241(f) WAS HUMANITARIAN AND ANY AMBIGUITY OR ALLEGED CONFLICT WITH OTHER PROVISIONS OF IMMIGRATION LAWS IS TO BE RESOLVED IN FAVOR OF THE ALIEN AND FAMILY UNITY.

As noted above, the Court below candidly admits that a literal reading of §241(f) would grant relief to the Reids. *Reid, supra,* 492 F.2d 251, 253. But it then denies such relief based on its conclusion that Congress could not have intended such a result since this would undermine "the integrity of the immigration visa and inspection procedure . . ." *Id.* 492 F.2d 251, 260.

Court's construction of §241(f) in *Errico* a justification for deviation from the literal meaning of the statute as argued by the majority below. *Errico* held that §241(f) should apply not only to aliens who were excludable at entry under 8 U.S.C. §1182(a)(19) but also to those aliens who were excludable at entry under 8 U.S.C. §1182(a)(20) and (21). The reasoning of the Court was simple. Any alien excludable at entry under subsection (19) for having procured a visa or other documentation or entry by fraud would *a fortiori* be excludable under either sub-section (20) or (21) as well for having entered without inspection or lawfully issued documents. So to limit §241(f) coverage to sub-section (19) would allow the Service, by artful selection of the deportation charge, to avoid application of §241(f) in every instance. The *Errico* ruling was simply a clarification of the obvious intent of Congress to avoid rendering the statute a total nullity; and this is a long-recognized exception to the maxim of strict statutory construction. *U.S. v. Howell,* 78 U.S. 432 (1870); *United States v. Raynor,* 302 U.S. 541, 547 (1938).

This decision ignores not only the words of the statute and the express legislative history but also the explicit and dispositive ruling of this Court in *Errico*.

Section 241(f) was originally adopted as part of the Immigration and Nationality Act Amendments of 1957 ("1957 Act" hereinafter) and must be viewed in that context. Unlike many previous Congressional enactments on the subject of immigration,[8] the 1957 Act was not restrictive but uniformly humanitarian in purpose. It was intended to alleviate many of the harsh provisions of the 1952 Act based on a Congressional conclusion that . . .

> "It was more important to unite families and preserve family ties than it was to enforce strictly the quota limitations or even the many restrictive sections that are designed to keep undesirable or harmful aliens out of the country." *Errico, supra,* 385 U.S. 214, 220.

And, nowhere in the statute or legislative history is there the slightest indication that Congress intended or was even aware of the distinction suggested below between visa-bearing aliens and aliens who enter by a false claim of citizenship at the border. *Gonzalez de Moreno, supra,* 492 F.2d 532 at 536-537. If anything, the legislative comment accompanying §241(f) indicates to the contrary since it identified a primary concern with "border control"

[8]For a brief history of the growth of qualitative and quantitative restriction on immigration of aliens leading up to 1957, see generally, *Waiver of Deportation: An Analysis of Section 241 (f) of the Immigration and Nationality Act,* 4 Calif. W.Int'l L.J. 271, 275-280 (1974).

laxity, not visa-granting laxity.[9] H.R. Rep. No. 1199, 85th Cong. 1st Sess. p. 11, U.S. Code Cong. & Admin. News, 1957, p. 2024.

Finally, every argument raised by the majority below in relation to Congressional intent was considered at length and disposed of by *Errico*. *Errico* reviewed the history of §241(f) specifically and the 1957 Amendments generally and concluded that despite the obvious conflict with other provisions of immigration law the humanitarian intent of Congress was dominant and that any ambiguity or conflict should be resolved in favor of the alien and in furtherance of the overriding purpose . . .

[9]The opinion below makes a bootstraps argument that because it will be more difficult to retroactively determine admissibility at the time of entry when an alien has not gone through visa-applicant screening, §241(f) should be construed not to have been intended to relate to entry by a false claim of citizenship. *Reid, supra,* 492 F.2d 251, 257. There are three answers to this argument. First, by its very nature §241(f) contemplates a retroactive proceeding. Second, the fact of having gone through visa-screening will almost always be meaningless in a §241(f) proceeding anyway; for if there were something in the visa-application file that would help prove the alien inadmissible at the time of entry he never would have been admitted in the first place. *Lee Fook Chuey, supra,* 439 F.2d 244, 250; *Gonzalez de Moreno, supra,* 492 F.2d 532, 537. Finally, the "qualitative" grounds of excludability which would support a denial of §241(f) relief are not nearly as elusive of retroactive proof as the *Reid* majority suggests. Physical disabilities (§1182(a)(1)-(7), e.g.) are ongoing in nature and thus easily proven. Criminal disabilities (§1182(a)(8) and (9), e.g.) are matters of public record with or without visa-screening. And even the "public charge" aliens excludable under §1182(a)(15) (the only example cited in *Reid*) pose little problem. For if they actually become a public charge that will be a matter of record and they will most likely be deportable under §1251(a)(8). And if they don't become a public charge then they probably weren't likely to in the first place.

". . . of preventing the breaking up of families composed in part at least of American citizens, . . ." *Errico, supra,* 385 U.S. 214, 225.

Viewed in the light of this history, the result below simply cannot stand. For where the *Errico* decision resolved an admittedly ambiguous provision of §241(f) in favor of the alien and the Congressional purpose of preserving family unity, the *Reid* opinion "creates doubt where the statute speaks with seeming clarity" and then resolves that doubt *against* the alien. *Gonzalez de Moreno, supra,* 492 F.2d 532, 537; *Reid, supra,* 492 F.2d 251, 262 (dissenting opinion of Judge Mulligan).

III

CONTRARY TO THE SERVICE'S CONTENTION THE MEXICAN BORDER, FAR FROM BEING AN ARGUMENT FOR RESTRICTIVE INTERPRETATION OF §241(f), WAS THE EXPRESS AND PRIMARY PURPOSE FOR THE ADOPTION OF §241(f) IN THE FIRST PLACE.

The Congressional intent with regard to the applicability of §241(f) to the Mexican border could not be clearer. The House Report accompanying §7 of the 1957 Act identifies the primary beneficiaries of §241(f) as being:

". . . mostly Mexican Nationals who, during the time when border-control operations suffered from regrettable laxity were able to enter the United States [and] establish a family in this country . . ." H.R. Rep. No. 1199, 85th Cong., 1st Sess., p. 11, U.S. Code Cong. & Admin. News 1957, p. 2024.

Secondly, the Service's argument that it is impossible to adequately inspect an alien at the Mexican border on a false claim of citizenship is simply not true.

The Service has plenary power under 8 C.F.R. §235.1 to summarily reject a claim of citizenship, inspect the applicant as an alien and exclude him from entry pending an exclusionary hearing before an Immigration Judge pursuant to 8 U.S.C. §1225.[10]

Or, less drastically, the Service could certainly require that returning citizens present birth certificates, driver's licenses, social security cards or other documentation in support of a claim of citizenship. And a cursory examination of such documents would hardly "paralyze" international travel as suggested by the *Reid* majority.[11]

If the Service does not exercise these powers it is not because it cannot do so, *but because it has chosen not to.* Our Mexican border is and traditionally has been open because the Service has deemed laxity of enforcement at the Mexican border to be in the best interests of our country, particularly our domestic farm economy.[12]

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[10]So complete is the power of the Service in this respect that not even the judicial writ of habeas corpus is available to an excluded citizen outside the United States. *Ng Yip Yee v. Barber,* 210 F.2d 613 (C.A.9, 1954) cert. den. 347 U.S. 988.

[11]*Reid, supra,* 492 F.2d 251, 256.

[12]*Bustos v. Mitchell,* 481 F.2d 479 (C.A.D.C. 1973) (presently under submission to this Court as *Richardson v. Bustos,* Docket No. 73-300); *Gooch v. Clark,* 433 F.2d 74 (C.A.9, 1970) cert. den. 402 U.S. 995.

And this, we submit, is the very administrative laxity of enforcement which Congress was concerned with when it adopted §241(f) in the first place.

Bustos deals with a challenge to the Service's long-standing administrative practice of allowing alien commuters to reside in Mexico and enter the United States on a daily or seasonal basis with only a cursory inspection of a laminated "I-151" green card,[13] but an understanding of that practice and the reasons behind it is essential to understanding the history of §241(f) as it relates to the case at bar.

This "green-card" system has its origins in an informal . . .

> ". . . border crossing system of the nineteenth and early twentieth centuries as a result of which aliens living in Canada and Mexico, as well as United States citizens living in the United States, were able to travel freely into the adjoining country for pleasure, for business or for employment." *Bustos, supra,* 481 F.2d 479, 485.

More recently, the primary impetus for continuation and expansion of the green-card system has been the lack of domestic farm-laborers in the United States. The Service admits that it has freely expanded the "green-card" system *by administrative fiat* because of an increased need for farm-workers since Congress terminated the "bracero" program in 1964. *Id.* 481 F.2d 479, 482.

[13]Specifically, the plaintiffs in *Bustos* argue that every "re-entry" by a green-card commuter should constitute an original "entry" within the meaning of 8 U.S.C. §1101(a)(13) and should therefore be subject to the labor certification requirements of 8 U.S.C. §1182(a)(14).

So, cursory inspection of green-cards, like cursory inspection of claims of citizenship, is an administrative practice which has grown not because it was Constitutionally or statutorily mandated, but because the Service has perceived it to be in the best interests of our Country. American agriculture needed farm-workers; and a free and open border was the way to get them.

Viewed in this context, the purpose of Congress in relation to §241(f) and the Mexican border comes into sharp focus. Far from being an anomalous attempt to "reward fraud" as the Service delights in arguing, §241(f) is an equitable statute specifically designed by Congress to forgive the relatively insignificant fraud of qualitatively admissible farm workers and other laborers who have come to this Country at the tacit invitation of the Service and in furtherance of our Country's economic and diplomatic interests.

Whatever its relationship to immigration law generally, §241(f) is an integral and express part of our country's delicate diplomatic relations at the Mexican border. And as then Secretary of State William P. Rogers stated in an affidavit opposing termination of the "green-card" system in *Bustos,* adjustment to those diplomatic relations are better fashioned by legislative or administrative processes, and not by the courts.[14]

Without commenting on the merits of *Bustos* one way or the other, we would observe that if judicial

[14]*Bustos, supra,* 481 F.2d 479, 487 (footnote 26)

abstention is appropriate there, in support of an administrative practice which admittedly "strains the language" of the statute[15] it is particularly appropriate in the case at bar where the words of the statute and the Congressional intent are clear.

CONCLUSION

It is submitted, therefore, that the *Lee Fook Chuey* doctrine is good law and constitutes nothing more than continued application of the express language and humanitarian purpose of §241(f) as enunciated by this Court in *Errico*.

The decision below is wrong for all the reasons set forth in Judge Mulligan's dissent and in the subsequent unanimous 5th Circuit decision in *Gonzalez de Moreno, supra*.

The decision below should be reversed, and the Ninth Circuit decision in *Echeverria* (No. 73-1917) should be summarily affirmed.

Respectfully submitted,

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[15] *Gooch v. Clark, supra*, 433 F.2d 74, 80.